The complaint

Mrs H has complained through a representative that Everyday Lending Limited (Everyday) mis-sold her a loan she couldn't afford to repay.

What happened

Mrs H had one loan from Everyday and a brief summary of the loan can be found below.

loan number	loan amount	agreement date	repayment date	term (month)	monthly repayment
1	£6,000	25/06/2016	outstanding	48	£318.40

It isn't clear from the statement of account provided by Everyday whether the loan has been repaid. But I can see, that in October 2019 there was some write off, of the interest and arrears. For the purpose of this decision, I've assumed there is still an outstanding balance left to repay.

Everyday issued its final response letter about Mrs H's complaint on 15 December 2021 and it concluded it hadn't made an error when it approved the loan.

Everyday said it carried out its normal verification checks, which included obtaining a credit report, verifying Mrs H's income through a payslip and it also reviewed her bank statements. It also calculated her expenditure using ONS (Office for National Statistics) with a minimum of £500 and a maximum of £1,000. Everyday says it regards 35% as the national average.

Everyday concluded, for this loan that Mrs H's income was around £1,700 per month with estimated outgoings of £803.21. Which left her with around £593 each month after her loan commitment was considered.

Unhappy with this response, Mrs H's representative referred the complaint to the Financial Ombudsman Service.

Mrs H's complaint was considered by one of our adjudicators and she upheld the loan. She considered that Everyday had evidence to suggest that the repayment for this loan along with her other outstanding credit commitments represented a significant portion of her monthly income.

In addition, in the adjudicator's view even considering the consolidation of some of Mrs H's other debt (as the described purpose of the loan) this wouldn't have improved her overall situation.

Mrs H's representative acknowledged receipt of the adjudicator's assessment.

Everyday didn't agree with the outcome. In response it said (in summary):

- Everyday provided a list of credit commitments Mrs H would consolidate including, a payday loan, a credit card and two mail order accounts.

- After these repayments Everyday says Mrs H's credit commitments would've been around £435.40 – which is only 25% of her monthly income.
- Had this loan not been provided, then it would've taken Mrs H around 156 months to repay those debts by just repaying the minimum repayment each month. By consolidating these loans would be repaid within 48 months.

As no agreement could be reached, the complaint has been passed to me to resolve.

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.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching 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 Mrs H would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mrs H would have been able to do so?
- Did Everyday act unfairly or unreasonably in some other way?

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

For this loan, Everyday asked Mrs H for her monthly income, which she declared as being £1,667 Everyday then verified this through seeing a copy of a payslip, and the payslip from May 2016 shows she earned £1,754. Everyday therefore, had an accurate idea of Mrs H's monthly income. But, from the payslip Everyday knew that some of this income was made up of overtime which would suggest that Mrs H's basic salary i.e. without overtime was less than what she had been paid.

Everyday has then shown that Mrs H's living costs, based on ONS data along with credit commitments came to around £803.21. Which would've left a sufficient amount of disposable income to be able to afford the loan repayments each month – for 48 months.

So, it may have been reasonable for Everyday to believe that Mrs H would've been in a position to repay her loan. However, I don't think, given what I've seen that this loan was sustainable for Mrs H.

Everyday says the loan was for consolidation purposes. Indeed, it has shown that of the £6,000 advanced £2,229.06 was actually made out as a cheque to one of the credit card providers with the remaining amount £3,770.94, as far as I can see, being paid directly to Mrs H.

Everyday could've been confident that at least £2,229.06 would go towards to repaying one of her credit providers. However, it was aware from the credit checks that Mrs H actually owed creditors more than £11,500 through ten different credit providers.

In response to the adjudicator's assessment, Everyday says that the loan was in effect beneficial for Mrs H as it provided a vehicle for her to repay the balance within 48 months – compared to 156 months it may have taken to repay the debts she was repaying had she just made the minimum repayment.

But it is worth noting that the interest rate this loan attracted was likely to be higher than some of the other debts that Mrs H had so I do question whether this loan was beneficial for Mrs H as Everyday suggests.

On top of the above credit card provider Everyday provided a list of creditors that Mrs H was due to repay with the funds of the loan which included two mail order accounts and a payday loan.

Based on the information Everyday saw in the credit report Everyday calculated the settlement figures for those credit accounts came to around £3,430. So, with the repayment for the credit card (which Everyday produced a cheque for), it believed that Mrs H would repay four credit accounts totalling £5,659.

Although, it isn't clear whether the mail order and payday loan were actually repaid with this loan because no evidence has been provided.

However, and it's worth saying, it seems Everyday released a larger portion of the loan amount to Mrs H – so it had no way of knowing whether Mrs H would consolidate the debts that Everyday expected her to. Everyday could've as far as I'm aware made those payments on behalf of Mrs H as it had done for her credit card.

After repaying the debts that Everyday believed that Mrs H would use the loan funds for, this would've left, six outstanding credit accounts (not including the loan repayments for Everyday) with a balance of £6,562. In addition, Everyday calculated that these outstanding credit commitments created a monthly repayment of £117. This, I think is clearly incorrect, given some of the credit commitments Everyday has recorded a monthly repayment of £0 when Everyday knew that there were outstanding balances. This just doesn't seem plausible.

However, given Everyday knew about an outstanding debt of £6,562 would remain, I think a more reasonable minimal repayment would've been around £328 – this assumed that Mrs H just paid just 5% of the outstanding balance for each account each month. However, I suspect, given what I can see on the bank statements and the type of accounts that were outstanding that she'd have to repay more than this because she'd also have an element of interest to pay as well.

Of course, on top of this, Mrs H was contracted to pay Everyday £348 each month, meaning just on credit commitments Mrs H would've been needed to repay at least £676 each month leading to Mrs H needed to repay almost 40% of her income each month just servicing her credit commitments.

So like, the adjudicator, I do think this loan wasn't sustainable because she'd be committing to spend a significant amount of her monthly income in repaying her credit commitments. Which given what else Everyday knew ought to have led it to conclude the repayments weren't sustainable and there was a real risk that Mrs H wouldn't be able to repay this loan.

In addition to this, Mrs H would've had seven outstanding credit commitments before any other living costs were taken off the other direct debits that can be seen in Mrs H's bank statements – for example payments towards a television subscription service. So, I don't think Everyday should've approved this loan.

I can see from the bank statements, that there was evidence of, in the two months before the loan being approved, Mrs H taking a short-term loan, repaying it and then immediately coming back for another loan. I do have concerns that this pattern of behaviour indicated that Mrs H was or likely having financial difficulties and further reinforces why I think this loan wasn't sustainable.

Overall, I think there was a real risk that this loan was unsustainable for Mrs H given the amount each month she was committed to pay for her credit commitments. In addition, I don't consider that this loan would've made any real improvements to Mrs H overall financial position.

I'm therefore upholding Mrs H's complaint.

Putting things right

I think it is fair and reasonable for Mrs H to repay the principal amount that she borrowed in respect of her loan, because she's had the benefit of that lending. But as I have concluded Everyday shouldn't have provided this loan, it should look to remove the interest and fees from the amounts due under the loan agreement.

As I’ve said above, it isn’t clear whether the loan has been repaid, so for the purposes of the redress I’ve assumed a balance remains.

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

Everyday should:

- remove all unpaid interest, fees and charges applied to the loan;
- treat any payments made by Mrs H as payments towards the capital amount for this loan;
- If and when Mrs H has paid more than the capital then any overpayments should be refunded to her with 8%* simple interest from the date the overpayments arose to the date of settlement;
- If an outstanding balance remains after carrying out the above, Everyday should try to come to a mutually affordable repayment plan with Mrs H – I’d remind it of its obligation to treat Mrs H fairly and with forbearance and
- remove any negative information about this loan from Mrs H’s credit file.

*HM Revenue & Customs requires Everyday to deduct tax from this interest. Everyday should give Mrs H a certificate showing how much tax it’s deducted, if she asks for one.

My final decision

For the reasons I’ve explained above, I’m upholding Mrs H’s complaint.

Everyday Lending Limited should put things right for Mrs H as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 12 August 2022.

Robert Walker
Ombudsman