DRN-3648855

The complaint

Mr P, through his representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to him when he could not afford it.

What happened

Mr P took one loan of £2,000 repayable over 24 months from 20 March 2018 and the monthly repayments were to be £248.55. The total to repay to Everyday Lending was £5,965.20 if he had repaid through to the end of the term. Mr P repaid the bulk of the loan early in July 2019 and then a smaller outstanding sum in November 2019. Mr P paid overall £5,034.69.

Mr P complained and Everyday Lending issued its final response letter (FRL) in January 2022. In that FRL it said that Mr P's regular monthly net income was £2,473.68 which it said it had verified with a payslip. It had checked up on his job, looked at two sets of bank account statements and carried out a credit search. Using what it knew combined with Office of National Statistics (ONS) data it had calculated that Mr P's monthly expenses were just under £1,731, leaving him with what it said was just over £494 a month disposable income. This figure was '…*after taking into account consolidated loans and Everyday Loans monthly repayments.'* Everyday Lending did not uphold Mr P's complaint.

Everyday Lending has sent to us a schedule of the loans it had identified that Mr P owed money on, and his other credit and debt situation. I will refer to that in the main body of the decision. It had also done an income and expenditure calculation (I&E) spreadsheet which I refer to later.

After Mr P had referred his complaint to the Financial Ombudsman Service, on of our adjudicators looked at the complaint. He analysed what Mr P usually paid each month to service his debts, what the effect of the new loan was to consolidate his debts and decided that Mr P was not able to afford the loan. He thought that at Everyday Lending had got it wrong.

Mr P agreed with our adjudicator. Everyday Lending disagreed. Our adjudicator issued a second letter of opinion and after no resolution was reached the complaint was referred 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 the relevant rules, guidance and good industry practice - on our website.

Considering 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 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?

- 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 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.

Considering 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 P's complaint.

The fact that Mr P repaid the loan early is not relevant when considering a complaint about irresponsible lending as the period for me to review is the lending decision date which was March 2018.

Everyday Lending has said that Mr P was going to use the capital sum to consolidate debts. And that seems to have formed the basis of the rationale to lend. However, I've seen no evidence to show me that Everyday Lending satisfied itself that the debts which were going to be paid off using the £2,000 loan capital was so used. Often I see records to show that

Everyday Lending had paid those other creditors off directly.

The Statement of Account it has sent to us for Mr P shows that on 21 March 2018 the £2,000 was advanced to Mr P. So, it does not seem to have been the case that Mr P's other debts were paid off with this loan by Everyday Lending directly. It's feasible that Mr P used the £2,000 for other matters and remained with his existing debt and the £249 (rounded) a month to pay for this loan on top.

Everyday Lending said it obtained and reviewed Mr P's bank statements for two months and did a credit search. It also checked where he worked. Everyday Lending said it used statistical data and figures to calculate the living expense element of affordability.

The I&E Everyday Lending carried out, under scrutiny, I think was wrong. It used Mr P's salary of £2,474 (rounded). It deducted his rent each month of £650. It used its usual formula (35% of income up to a max if £1,000) to get a living expenses figure of £866 (rounded). But that living expense figure could have been more than that. And using the bank statements it used to review Mr P's financial situation I think it was more than that.

Everyday Lending also had a list of what it described as 'creditor repayments' of £1,808 which it had down as 'monthly' expense. So that came to a negative figure of £850 a month.

Then the 'monthly creditor payment consolidating' figure was factored in at '£1,593' which meant that according to Everyday Lending Mr P would have been left with £744. I think those figures were incorrect. After deducting the Everyday Lending new loan repayments of £249 (rounded) then Everyday Lending's calculations led it to think that Mr P would be left with £494. I think that it got this wrong.

Here is a duplicate (adapted) of the debt table Everyday Lending had prepared.

Type of credit agreement/account	Balance	Settlement	Repayment (repayment as per the credit search)	Repayment frequency
Payday loan (rounded sum)	£777	£777	£777	monthly
Payday loan	£560	£560	£560	monthly
Payday loan*	£350	£0	£108 (£117)	periodic
Payday loan*	£250	£0	£64.62 (£70)	periodic
Payday loan*	£137	£0	£63.69 (£69)	periodic
Credit card	£771	£0	£23.13	monthly
Car finance	£10,380	£0	£192	monthly

The credit card and the car finance debts were not going to be included in the debt consolidation. But as I have said earlier, I don't think that there was any debt consolidation.

The sums that were calculated to be part of the 'consolidation' were £777, £560, £350, £250, £137 which added up to £2,074. So, the £2,000 loan was a bit 'short' to clear them. I know that our adjudicator referred to this point. And it substantiates my own view that Everyday Lending got it wrong when it thought it was lending to Mr P to consolidate debts. I think it was simply adding further debt to his debt burden.

The monthly repayment 'saving' was not what I think Everyday Lending had calculated it to be as the payday loans I have placed a star by in the above table had monthly repayments which came to £236.31 (or using the credit search monthly repayment figures - £256).

The other two payday loans would, in theory, not be costing more each month as they ought to have been paid off.

Added to which, the bank account statements Mr P had provided showed that on both of the accounts he was right up to his credit limit on his overdrafts and was spending at least £150 a month in daily overdraft fees – a figure I have obtained from reviewing those bank statements that Everyday Lending saw. The credit card balance minimum monthly repayment at 3% was £23.13. And those payments for the overdraft and the credit card (referred to above) would not have reduced the balances. Therefore, that debt level would have remained much the same.

Everyday Lending had enough information to be able to calculate exactly what Mr P's regular expenditure was on all items – rent, council tax, food, utilities, travel, insurances, regular credit commitments, and other items usual to modern living without having to utilise ONS data and an in-house formula to get that figure.

It knew Mr P's debt situation particularly that he had outstanding payday loans and both bank accounts were right up to, or over, their overdraft credit limits which would leave him with little room with which to find the cash to pay for the new loan. It had not verified that Mr P was going to use the £2,000 to consolidate his loans and thereby reduce his outgoings each month.

My calculations using the information to hand – all sent to us from Everyday Lending – was that Mr P's outgoings exceeded his salary, and he had other loans to pay and Everyday Lending had not the assurance to know that the £2,000 loan was going to be used to pay down other debt.

So, I think that on the information Everyday Lending had from its own resources it made a mis-calculation as to the affordability of this loan. In the circumstances I think that Everyday Lending lent irresponsibly.

I uphold Mr P's complaint.

Putting things right

To put things right Everyday Lending should:

- remove all interest, fees and charges applied to the loan,
- treat any payments made by Mr P in respect of this loan as payments towards the capital amount of £2,000,
- If Mr P 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,
- remove any adverse payment information about the loan from Mr P's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending 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 and I direct that Everyday Lending Limited, trading as Everyday Loans, 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 27 October 2022.

Rachael Williams
Ombudsman