DRN-3653601

The complaint

Mr W complains that Everyday Lending Limited trading as Everyday Loans (Everyday) irresponsibly lent him money on a high cost loan that he couldn't afford to repay.

What happened

Everyday provided a loan to Mr W, on 12 March 2018, for £1,750, repayable over 12 months at the rate of £250 a month.

Mr W started to have problems paying the instalments in August 2018, and thereafter set up a repayment plan with Everyday. He eventually paid of the loan in April 2019. He complained to Everyday that the money had been irresponsibly lent to him at a time when he was struggling with other debts. He also said he had told Everyday he had a small gambling problem, and later told us that entries on his bank statements showed he had a drinking problem.

Everyday said it carried out eligibility checks including verifying his income, checking his credit record, and reviewing a bank statement. It assessed his living expenses using ONS (Office for National Statistics) data. It assessed the loan was affordable, also pointing out that his bank statements didn't show he had been gambling.

On referral to the Financial Ombudsman our adjudicator said that the results of Everyday's checks showed Mr W's total monthly credit repayments represented a significant proportion of his income. In those circumstances, there was a significant risk that Mr W wouldn't have been able to meet his existing commitments without having to borrow again. She proposed that Everyday repay all the interest and charges added to the loan.

Everyday disagreed, in response it said:

- There is no ruling on the maximum creditor repayments in relation to income.
- Mr W's total repayments were £479.29 on an income of £1,634.26 and he had a disposable income of £249.97.
- His creditor repayments were solely made up of old historic defaults from 2013-2016. There was no evidence that he had taken any further credit after these defaults as there was nothing else on his credit file.
- The bank account was well run with no evidence of financial stress.

The matter has been passed to me for further consideration.

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 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 W would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr W 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 W’s ability to make the repayments under the 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 Everyday had to ensure that making the repayments on the loan wouldn’t cause Mr W 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 W**.** 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 such a 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).

Everyday has pointed out that there is no ruling on the maximum creditor repayments to income. As it should be aware, and as I’ve set out above, there are a number of things the lender had to think about in assessing affordability and sustainability. But, as we’ve repeatedly said in previous decisions, where a consumer’s credit commitments as a proportion of their income are high, that is an indication of possible unaffordability. And we say that any figure over 25% does raise that issue. Here, using Everyday’s own figures, it was proposing to more than double Mr W’s credit commitments by providing this loan which wasn’t sufficient to reduce any of his debts, as the repayments on the loan were much higher than he would have had to pay on each loan he was repaying. His income was around

£1,635 a month and his credit commitments by Everyday's calculations, about £230. By providing the loan, Mr W's debt to income ratio was about 29-30%, and as I say a potential indicator of unaffordability.

Everyday calculated Mr W would have a disposable income of around £250 a month after taking into account the new loan repayments. But this figure was based on allowing 3% payments of the balances on all the defaulted loans, credit cards and a (historic) bank overdraft. We have said on a number of occasions that 5% is a more realistic figure if the debts are to be paid off within a reasonable time. If the figures are recalculated at 5%, his debt repayments would be round £375, plus the £250 figure on the new loan, amounting to about 38% of his income. This would also leave his disposable income at £104. I think that's too low and the loan was likely to be unaffordable.

Everyday has pointed out that Mr W's only debts were historic defaults and he hadn't taken out any recent credit. Unfortunately Everyday hasn't provided us with the credit report from the time it assessed Mt W's application, but as there don't appear to be any obvious loan or credit card payments on his bank statements, I'll assume its figures are correct. Nevertheless, this loan wasn't proposed to be paying off any of his debts, so his debt liability would have increased when this loan was approved and so that has to be taken into account.

As to Mr W's gambling problem, there are no obvious entries relating to gambling on his bank statement. He asserts that he told the person in branch who sold him the loan, but I have no other evidence of this. With regard to a drinking problem, whilst there are some payments that could relate to this I can't see that they were excessive. Whilst his main bank account did run an overdraft I note that he had a savings account which would mostly have covered the overdraft. I don't think that Everyday could have been expected to be aware that Mr W had a gambling, or drinking problem. As he's paid off the loan, Everyday doesn't need now to take any specific action concerning this.

So I don't think that Everyday made a fair lending decision.

Putting things right

Mr W has had the capital payment in respect of the loan, so it's fair that he should repay this. So far as the loan is concerned, I think Everyday should refund all interest and charges as follows:

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

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

My final decision

I uphold the complaint and require Everyday Lending Limited trading as Everyday Loans Every 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 W to accept or reject my decision before 21 November 2022.

Ray Lawley
Ombudsman