DRN-3705293

The complaint

Mr U complains that Everyday Lending Limited trading as Everyday Loans irresponsibly lent him money on high cost loans which he couldn't afford to repay.

What happened

Mr U was provided with the following loans by Everyday:

	Date of loan	Amount	Repayment period	Monthly instalment
Loan 1	19/11/2018	£1,500	24 months	£168
Loan 2	30/5/2019	1,200	24 months	£145

He got into difficulties over the repayments for both loans and has entered into a DMP (debt management plan).

In respect of loan 1 Everyday said it carried out all necessary eligibility checks, including reviewing Mr U's credit report, verifying his income and considered recent bank statements. It applied ONS (Office for National Statistics) data to assess his living expenses. It said that it assessed the loan as being affordable.

With regard to loan 2, Everyday agreed this shouldn't have been provided. It therefore agreed that it would refund the interest and charges and apply the refund towards the outstanding balance due for loan 1.

On referral to the Financial Ombudsman our adjudicator noted Everyday's offer in respect of loan 2 (which I understand still stands) and reviewed loan 1. She said that after calculating Mr U's credit commitments, he would have been left with a negative disposable income. He also had a number of recent payday loans on his credit record. So she said that Everyday shouldn't have provided the loan.

Everyday disagreed with our adjudicator's calculations and also pointed out that the loan was in part to consolidate some of his outstanding loans, thereby removing him from a dependency on payday loans.

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 U would be able to repay the loans in a sustainable way?

- If not, would those checks have shown that Mr U 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 U's ability to make the repayments under the agreements. 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 loans would be sustainable. In practice this meant that Everyday had to ensure that making the repayments on the loans wouldn't cause Mr U 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 U**.** 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).

loan 1

Using Everyday's figures, Mr U had a monthly income of £1,926, with monthly living expenses of £851 and rent of £325. It calculated his credit commitments at £469 – this figure takes into account an estimated £251 freed up by paying off some of his credit. Yet, with the new loan repayment, his credit commitments were still 33% of his income – a high figure which is potentially an indicator that the loan was unaffordable. And Everyday assessed his monthly disposable income at around £114, which I think is low.

I've noted also that the whole of the loan monies were paid to Mr U. As the loan was supposed to be for consolidation, Everyday took the risk that Mr U wouldn't use the funds for consolidating his loans. It could have repaid the loans/credit first before transferring the money. I don't know if Mr U paid off any those loans – by the look of his credit record at the time of the application for loan 2, it doesn't appear that he did.

My view is that even on the basis of Everyday's calculations and even if Mr U did pay off some loans, this loan wasn't affordable. But, as our adjudicator has said in calculating the payments for credit cards we say that a monthly payment of 5% of the balance should be taken into account. As the rate of interest on the credit cards is likely to be high, a 3% payment wouldn't pay off the balance in a reasonable time. I've noted that Everyday say the standard figure is 3%, and it hasn't been challenged by us. I don't agree – our position on this has been made clear to Everyday a number of times. Using the 5% calculation, Mr U would've had a negative disposable income.

So I don't think that Everyday made a fair lending decision in respect of this loan.

loan 2

Everyday agreed that this loan shouldn't have been made, and I think that's reasonable. The remedy should be the same as for loan 1, so I will add it to my decision as set out below.

Putting things right

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

- Remove all interest, fees and charges applied to the loans.
- Treat any payments made by Mr U as payments towards the capital amount.
- If Mr U 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 U.
- If Everyday has sold the outstanding debt to a third-party it should do what it can to buy it back - if it can't, it can't deduct any outstanding balance from the redress and it then needs to work with the third-party to bring about the steps above.
- Remove any adverse information about the loans from Mr U's credit file.

*HM Revenue & Customs requires Everyday to deduct tax from this interest. It should give Mr U 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 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 U to accept or reject my decision before 16 November 2022.

Ray Lawley
Ombudsman