DRN-3780490

The complaint

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

What happened

Everyday provided Mr H with the following loans:

	Date of loan	Amount	Term	Monthly repayment*	Date repaid
Loan 1	09/07/2015	£1,500	24 months	£156	28/01/2016
Loan 2	28/01/2016	£3,655.82	36 months	£359	Live

*rounded up or down

He repaid loan 1 with loan 2. The balance of both loans was said to be for car repairs. He complained that the loans were unaffordable to him and the repayments caused him stress and anxiety.

Everyday said it carried out checks of Mr H's credit, verified his income, reviewed recent bank statements, and assessed his living expenses using ONS (Office for National Statistics) data for both loans. It said that in both cases it assessed that the loan repayments were affordable.

On referral to the Financial Ombudsman, our adjudicator said that Everyday hadn't made fair lending decisions in respect of either loan. This was because she said the results of the checks show that Mr H's total monthly credit repayments represented a significant proportion of his income. In those circumstances, there was a significant risk that he wouldn't have been able to meet his existing commitments without having to borrow again.

Everyday disagreed, pointing out that there are no rules that state what a significant percentage amount of repayments to income is or that that should be a reason not to grant lending.

I issued a provisional decision. In it I said that I provisionally didn't uphold the complaint in respect of loan 1, but did in respect of loan 2.

Neither party responded to my provisional findings.

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.

The following were my provisional findings:

“*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 H would be able to repay the loans in a sustainable way?*

- *If not, would those checks have shown that Mr H 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 H’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 H 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 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. 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 is right to say that the rules don’t say what a significant percentage amount of repayments to income is. Nor at the time the loans were approved did they specifically refer to the value of the consumer’s debts against their income being a potential indicator of affordability. Nevertheless our approach is that we think it reasonable to take into account where the consumer’s credit commitments against their income are high. I think that anything above 25% could be regarded as high and may be a potential indicator that the loan is unaffordable..

loan 1

The credit check showed that Mr H had debt repayments of around £98 a month. He did have some defaults on his record and past short term loans. His income was about £1,679 a month. Based on those figures, with the new loan repayment, the proportion of his income being spent on credit commitments was about 15%. His disposable income left after taking all that into account was about £342. I think the checks Everyday did were reasonable and proportionate and that they showed the loan to be affordable.

loan 2

Mr H's income had gone down slightly, now being around £1,617 a month. His credit commitments had increased slightly. With the new loan repayment figure of £359 (accounting for the old loan being repaid), his new total credit commitments would have been around £460 a month, around 28-29% of his income and a possible indicator that the loan might not be affordable, or sustainable.

Everyday assessed Mr H's disposable income to be around £321 a month. But the only reason it reached that figure was because Mr H's living expenses for loan 1 had been assessed at around £813 a month, but for this loan at £566. I can't find any explanation in Everyday's files as to why the figure changed so much for loan 2, except that it seems it said for this loan his living expenses were a straight 35% of his income (according to ONS data). But in the absence of any reason why Mr H's living expenses had gone down, I have to conclude that he would have had very little disposable income left to pay the new loan.

I conclude that, although Everyday carried out proportionate checks, those checks would have shown the loan made a fair lending decision in respect of this loan."

As neither party responded to those findings, my provisional findings are now final and form part of this final decision.

Putting things right

Mr H has had the capital payment in respect of loan 2, 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 loan 2.
- Treat any payments made by Mr H as payments towards the capital amount.
- If Mr H 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 H.
- Remove any adverse information about loan 2 from Mr H's credit file.

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

My final decision

I uphold the complaint in part 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 H to accept or reject my decision before 28 November 2022.

Ray Lawley
Ombudsman