DRN-3783797

The complaint

Mr L complains through his representative of irresponsible lending by Everyday Lending Limited trading as Everyday Loans (Everyday).

What happened

Everyday provided Mr L with the following loans:

	Date	Amount	Term	Monthly instalment	When repaid
Loan 1	17/5/2019	£4,000	48 months	£287.65	Settled by loan 2
Loan 2	20/7/2020	£6,068.72	48 months	£368.78	Still active

The first loan was for debt consolidation, the second loan was used for two purposes. Firstly, to repay the balance on the first loan and secondly to consolidate Mr L's credit card and his overdraft. He complained to Everyday that the loans were pushing him into further debt.

Everyday said that it carried out proportionate eligibility checks. These included obtaining and reviewing up to two months' bank statements from the customer's primary bank account, conducting a credit search, and carrying out a job check. To assess living expenses it used ONS (Office for National Statistics) data. It said that both loans provided were affordable.

On referral to the Financial Ombudsman Service, our adjudicator said that taking everything into consideration, he thought that there was a serious risk Mr L wouldn't have been able to meet his existing commitments without having to borrow again (which he did do after loan 1, for example). For those reasons, he didn't think the loans reflected responsible lending.

Everyday didn't agree and asked for an Ombudsman's decision.

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

- If not, would those checks have shown that Mr L 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 L'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 L 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 L. 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

The credit report obtained by Everyday after Mr L's application doesn't wholly reflect Mr L's credit commitments, which did include a number of payday loans. I have used the figures set out in Everyday's list of Mr L's accounts. It assessed that he was spending around £961 a month on credit commitments. It said the loan was to be used to repay £430.53 of those commitments. With the loan instalment added to his remaining credit commitments, this would still have meant him spending about 46% of his income (assessed at £1791.56 a month) solely on his credit commitments. My view is that that figure was too high and was a potential indicator of unaffordability.

Everyday assessed that Mr L would have had a disposable monthly income of around £216 after paying the loan instalment and consolidating the other loans. Whilst Everyday didn't arrange to pay those loans off directly, the evidence from the later credit report would suggest that Mr L did so.

I've noted that whilst he had a small overdraft on his primary bank account, Mr L had an overdraft on another current account of just over its limit of £1500. The loan wouldn't have been enough to pay that off with the other loans. Also for the credit card which had a balance on it of £3,178 Everyday assessed payment of 3%of the balance. Our approach is to assess such a payment at 5% to allow for the card to be paid off within a reasonable time. This is a difference of £66.

Taking those factors into account, I don't think the loan was affordable, so I don't think Everyday made a fair lending decision.

loan 2

Mr L approached Everyday for another loan only just over a year later. I understand that the purpose of the first loan was to remove Mr L's dependence on payday loans. However he had taken out a new payday loan, and was now paying £250 a month through standing order for a private loan.

Whilst Everyday said this loan was to consolidate his credit card and overdraft (which was now £422 for his primary account and £487 for the second account), its affordability assessment only took into account the old loan payment and the payday loan. It assessed his credit commitments at £678.33. Taking into account the old loan repayment and the £49 for the payday loan, but adding in the new loan instalment, would have given him monthly credit commitments of £ about £710. As a proportion of his income of £1,824 this was about 39%. That was lower than before but, in my view, still high.

Everyday assessed Mr L would have a monthly disposable income of about £357 after paying the new loan instalment. The full amount of the loan was issued to Mr L, though Everyday could have paid off his credit card balance and overdraft(s)if that was the intention of the loan. But it's not just pounds and pence affordability we look at when considering if a loan is sustainable.

I question the use of this new loan. Mr L effectively had to extend his old loan by a further four years, and even assuming he would then go on to use the balance to repay his credit card and/or his overdrafts the loan interest rate would have been a lot higher. And he clearly hadn't been able to remove his dependence on loans,

Taking all the circumstances into account I don't think this loan was affordable so I don't think Everyday made a fair lending decision.

Putting things right

Mr L has had the capital payment in respect of the 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 L as payments towards the capital amount.
- If Mr L 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 L

- 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 L's credit file.

*HM Revenue & Customs requires Everyday to deduct tax from this interest. It should give Mr L 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 L to accept or reject my decision before 22 December 2022.

Ray Lawley
Ombudsman