DRN-3791071

The complaint

Mr M complains through his representative that Everyday Lending Limited trading as Everyday Loans irresponsibly provided him with high cost loans he couldn't afford to repay.

What happened

Everyday provided Mr M with the following loans

	Date of loan	Amount	Term	Monthly Instalment	Date repaid
Loan 1	30/08/19	£1,500	18 months	£160.03	09/09/20
Loan 2	05/10/20	£1,000	18 months	£91.88	08/06/21
Loan 3	08/06/21	£2,750	30 months	£172	Still ongoing

He repaid loan 1 early, and repaid the balance on loan 2 with loan 3. But he has an ongoing issue with loan 3 and has requested to pay a reduced payment, which so far Everyday has refused, after carrying out a reassessment of his income and expenditure. He complained through his representative of irresponsible lending.

Everyday said it carried out all necessary verification checks. These included obtaining and reviewing Mr M's credit record, reviewing one month's payslip and the most recent two months' statements for his bank account. It used ONS (Office for National Statistics) data to assess his outgoings. It assessed that the loans were affordable.

On referral to the Financial Ombudsman Service, our adjudicator said that in respect of loans 1 and 2, as Mr M's credit commitments represented a significant proportion of his income the loan repayments were likely to be unsustainable. So he didn't think Everyday had made fair lending decisions in respect of those two loans. In respect of loan 3 he said Everyday had made a fair lending decision.

Everyday didn't agree. It specifically pointed out that the adjudicator had used 5% of the balances on credit cards and a mail order accounts as the payments Mr M should be paying. It said that its lending processes had been approved by the FCA. It pointed out that the figure only represented 5% of the balance as at the time of the loan. This balance would reduce each month so the credit card and mail order accounts would be repaid in a reasonable time with a 3% payment.

Mr M's representative didn't comment on the adjudicator's view.

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

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

This loan was said to be for debt consolidation. As all of the credit commitments don't appear on the credit report, I have used Everyday's figures. This shows a monthly liability for those commitments of £1,510. However that figure includes £513 maintenance, which would be regarded as living expenses rather than as credit commitments. So, deducting that figure and the amount saved by loan consolidation (£252) gives a figure of £745 a month. Adding in the loan payment gives £905. As a proportion of his assessed monthly income of £2,177 this is around 41%. I think that is a high figure and an indication that the loan was unaffordable.

Mr M's monthly disposable income after paying the new loan instalment was assessed by Everyday as being around £312. However it's not just the pounds and pence figure that we look at – Mr M was spending a lot each month on credit commitments. I've noted also that Everyday used ONS data and assessed his living expenses at £446. As a proportion of his income that seems rather low. I haven't seen any evidence as to why that figure is so low, considering it was assessed at nearly £300 more than that for loan 2 and more than £500 more for loan 3.

I think that this loan was unlikely to be affordable so I don't think Everyday made a fair lending decision.

loan 2

This loan was for the purchase of an engagement ring, with no debt consolidation, loan 1 having already been paid off. According to the credit report Mr M now had an hire purchase (HP) loan, an ordinary loan, two payday loans, and two credit cards and a mail order account.

Our adjudicator calculated the payments for the credit cards and the mail order account at 5% which reflects our general approach. Everyday argues that this should be 3%. However, some companies may well require more than that, and the purpose of it is to allow for the cards/accounts to be repaid within a reasonable time as at the time of the application, rather than allowing the absolute minimum payments to enable consumers to take out unaffordable credit. Everyday points out that the figure will only be the balance at the time of issuing the loan, so will go down over time and be proportionate to enable such balances to be paid off within a reasonable time.

However the overall difference in the monthly payments for the two credit cards and one loan account would in this case be around £13, so would make no difference in my view to the affordability of this loan.

Using the figures in the credit report which do tally with Everyday's figures, I calculate that Mr M would have been spending around £835 on credit commitments (including the new loan payments. This was about 32% of his monthly income (£2,621) and again high and I have to take account of the fact that he was likely to have used a loan of some sort to repay loan 1, and that his monthly income had increased..

His monthly disposable income was calculated at around £310. Again it's not just pounds and pence affordability that we take into account but whether Mr M could sustain the payments for this loan. Although he had paid off some credit commitments he had also taken on further credit cards and payday loans since loan 1. I think on balance this loan was unlikely to be affordable, so I don't think Everyday made a fair lending decision.

loan 3

Our adjudicator's view is that this loan was fairly lent. As neither Mr M nor his representative have commented on this I assume they have accepted it. And in looking at the figures I think the adjudicator made a fair assessment of this loan. So I don't uphold the complaint in respect of this loan.

Putting things right

Mr M has had the capital payment in respect of loans 1 and 2 so it's fair that he should repay this. So far as those two 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 M as payments towards the capital amount.
- If Mr M 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.
- If there's still an outstanding balance on loan 3, Everyday may use any repayment in respect of loans 1 and 2 to reduce that balance.
- Remove any adverse information about loans 1 and 2 from Mr M's credit file.

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

My final decision

I uphold the complaint concerning loans 1 and 2 and require Everyday Lending Limited trading as Everyday Loans to provide the remedy set out under "Putting things right" above.

I don't uphold the complaint concerning loan 3

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 December 2022.

Ray Lawley
Ombudsman