DRN-3829645

The complaint

Mr J, through his representative, complains that Everyday Lending Limited lent to him when he could not afford it.

What happened

Using information from Everyday Lending, here is a loan table of the approved loans. It appears that in October 2018 a loan for the same amount as loan 2 was applied for but does not appear to have been proceed with.

Loan	Date approved	Amount	Monthly repayment and number	Total repayable	Date of last payment
1	23 January 2017	£6,500	£307.56 x 48	£14,762.88	November 2018
2	20 November 2018	£8,500 which was used to repay loan 1 and release fresh funds	£334.61 x 48	£16,061.28	April 2022

After Mr J had complained, Everyday Lending responded with its final response letter (FRL) in which it gave reasons why it did not uphold Mr J's complaint.

Mr J referred the complaint to the Financial Ombudsman Service and one of our adjudicators looked at all the details and documents Everyday Lending had sent to us. He thought that neither of the loans should have been approved for Mr J.

Everyday Lending disagreed and stated these points which I have summarised:

- Mr J's mortgage cost was factored into the income and expenditure assessment (I&E) it carried out before loan 1
- He lived with parents and paid no rent to them
- At loan 2 he no longer paid a mortgage
- Mr J's 'internal score' and 'dmi' were very similar to loan 1
- There were no defaults since May 2016
- No 'returns' or 'gambling' transactions were visible on Mr J's bank statements

The abbreviation 'dmi' may refer to 'disposable monthly income'. We have received no details of the 'internal score'. The unresolved complaint was passed to me to decide.

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 Lending , each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr J would be able to repay in a sustainable way?
- If not, would those checks have shown that Mr J would have been able to do so?

The rules and regulations in place required Everyday Lending to carry out a reasonable and proportionate assessment of Mr J's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Everyday Lending had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr J 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 Lending to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr J**.** 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 a reasonable and proportionate 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 of time 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).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr J's complaint. I've decided to uphold Mr J's complaint for the same reasons as those given by our adjudicator.

For loan 1, Everyday Lending has said it obtained and reviewed Mr J's bank statements for two months and a credit search before lending to Mr J. It also checked where he worked. Everyday Lending said it used statistical data and figures to calculate the living expense element of affordability. This calculation takes into consideration the customer's income, region, household composition and residential status. They also said they applied a buffer to the living expenses amount to accommodate any unexpected minor changes in the customer's circumstances or one-off additional expenses. It said its affordability calculation showed that Mr J would have a monthly disposable income of £105 after taking into account his new Everyday Loan monthly repayments.

On Everyday Lending's own figures and calculations in its I&E assessment, Mr J was already paying a significant proportion of his income to other credit commitments (including his mortgage). And its own figures, after the debt consolidation and factoring in the new loan 1 repayments, would have left Mr J with a low 'left over' income of around £105.

When Mr J came back for loan 2 (having turned down a loan of a similar level a month earlier in October 2018) his credit commitments had increased a great deal and Everyday Lending knew this as it had obtained a credit search for November 2018 which were easily able to be compared with the credit search obtained for loan 1.

And the credit commitments for Mr J at the time he was applying to consolidate loan 1 and take a further amount of fresh funds, already was a high proportion of his monthly income. And its own figures, after the debt consolidation and factoring in the new loan 2 repayments, would have left Mr J with a low 'left over' income of around £99.

Considering both agreements were to commit Mr J for 48 months (four years) then I think that proceeding on the figures provided by Everyday Lending to defend the complaint is not persuasive. Both loans did not improve Mr J's cash flow position much and placed him into further debt with very little margin for any additional costs. Mr J had separated from his wife, was paying the mortgage and/or maintenance payments to her regularly. And these were significant and clearly long term commitments.

His large increase on his overall debt from around £6,000 (loan and revolving credit) in January 2017 to over £16,600 (loan and revolving credit) in November 2018 was too big a change to ignore. And £105 and £99 respectively each month (even allowing for the 'buffer' Everyday Lending said it factored in) was too low. And Mr J's credit commitments were a high proportion of his income for loans 1 and 2.

I uphold Mr J's complaint.

Putting things right

It seems from records I've seen that Mr J settled the account in April 2022. To put things right Everyday Lending should:

- remove all interest, fees and charges applied to the loans,
- treat any payments made by Mr J in respect of this loan as payments towards the capital sums received by Mr J,
- If Mr J has paid more than the capital then any overpayments should be refunded 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 Lending should come to a reasonable repayment plan with Mr J.
- remove any adverse payment information about these loans from Mr J's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mr J a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr J's complaint. I direct that Everyday Lending Limited should do as I have set out in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 31 January 2023.

Rachael Williams
Ombudsman