DRN-3862795

The complaint

Ms J complains through her representative of irresponsible lending by Everyday Lending Limited trading as Everyday Loans.

What happened

Everyday provided Mrs J with the following loans:

	Date of loan	Amount	Term	Monthly instalment	When repaid
Loan 1	11/04/2018	£3,000	24 months	£276.38	Settled by loan 2
Loan 2	26/4/2019	£5,000	36 months	£356.35	1/6/2019

Ms J repaid loan 1 with loan 2, and repaid that loan early, within five weeks. She complained through her representative that she couldn't afford the loans. She said she had multiple payday loans and got into further debt. She has supplied copies of her bank statements at the time both loans were provided.

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 Ms J's total monthly credit repayments for loans 1 and 2 represented a significant proportion of her income. So she said that it was unlikely that Ms J would have been able to sustainably meet the repayments for the loan.

Everyday disagreed, saying that there are no rules that state what a significant percentage 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 whilst I didn't think that Everyday had made a fair lending decision in respect of loan 1, Ms J's circumstances had changed by the time she made the application for loan 2. So I thought that Everyday had made a fair lending decision in respect of loan 2.

Neither party commented on 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.

My provisional findings are set out below in italics:

"*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 Ms J would be able to repay the loans in a sustainable way?*

- *If not, would those checks have shown that Ms J would have been able to do so?*

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Ms J'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 Ms J undue difficulty or significant adverse consequences. That means she 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 she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her 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 Ms 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 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

Ms J had a number of recent payday loans that didn't appear on her record. Everyday took account of those. This loan was for consolidation, mostly of those loans. I've taken Everyday's figures from its audit. Where it calculates that for revolving credit accounts (e.g.

Credit Cards, Mail order accounts) Ms J should have been paying 3% of the balances each month, I have calculated them at 5%. Everyday will be aware of our approach which is to allow for those balances to be repaid in a reasonable time period. This adds about £75 to the payments for the debts not consolidated by this loan.

Everyday assessed that Ms J's existing debt repayments amounted to about £1,213. The loan was intended to clear the recent loans, freeing up around £415 a month. Considering Ms J's bank statements at the time of this loan application and at the time of loan 2, and the respective credit reports, I think that she did clear those loans. But, with the new loan instalment, and the additional £75, her debts would still have been around £1,074 a month, which is about 47-48% of her assessed income of £2,257. Whilst I agree that the rules didn't specify what a significant percentage amount of repayments to income is, our approach is that a figure over 25% could indicate that the loan was unaffordable. And I think it reasonable to say that the ratio here was high and, as consequence, it was likely that the loan was unaffordable.

I wouldn't say that alone should be a reason not to grant lending, that depends on the other circumstances of the case. Here Miss J was assessed at having a disposable income of around £188 after paying the new loan instalment. However taking into account the further £75 I've noted, I think that this wasn't sufficient. I think that, at the time of providing this loan it was unlikely to be affordable. So I don't think Everyday made a fair lending decision

loan 2

I think the position was different for Ms J at the time of applying for this loan. First of all her credit commitments had gone down significantly. Out of five credit cards she had managed to reduce the balances on four, in particular a balance that was marked as in default had reduced from £1,074 to £319. As I've noted above, Ms J had cleared her previous payday loans, though had taken out two new ones, which she presumably intended to pay off. From her bank statements, whilst she did go overdrawn, this was not by very much (at the time of the credit report it was -£36).

Everyday assessed Ms J's credit commitments (including loan 1) at around £643. Taking account, as I did for loan 1, of additional payments for the credit cards and a mail order account, I have added a further £60. In consolidating loan 1 and accounting for the new loan instalments her new credit commitments represented about 31% of her assessed income of £2,539.

This was still high but considerably less than before. And her disposable income would have been about £712. Taking account of the likelihood that she would have been able to clear her two loans (total monthly instalments £203), and her having been able to reduce her other debts I think this loan was affordable. So I think Everyday made a fair lending decision."

As neither party has made any comments on my provisional findings, I remain persuaded by those findings. They are now final and form part of this final decision.

Putting things right

Ms J has had the capital payment in respect of loan 1, so it's fair that she should repay this. So far as loan 1 is concerned, I think Everyday should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to that loan.

- Treat any payments made by Ms J as payments towards the capital amount.

- If Ms J has paid more than the capital, refund any overpayments to her 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 Ms J

- Once any capital balance is cleared, remove any adverse information, if appropriate, about loan 1 from Ms J's credit file.

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

My final decision

I uphold the complaint in part and to require Everyday 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 Ms J to accept or reject my decision before 16 January 2023.

Ray Lawley
Ombudsman