DRN-3916507

The complaint

Mrs H (through a representative) has complained that Everyday Lending Limited trading as Everyday Loans (Everyday) was irresponsible in lending to her.

What happened

Mrs H was advanced two loans by Everyday and a summary of her borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	term of loan (months)	highest repayment
1	£2,000.00	17/04/2018	06/11/2019	24	£158.40
2	£5,000.00	06/11/2019	outstanding	48	£256.99

Some of loan 2, went towards repaying loan 1.

Everyday responded to Mrs H's complaint and didn't uphold it. Everyday concluded it had carried out proportionate checks before each loan was granted which included asking Mrs H for details of her income, expenditure, obtaining copy bank statements and doing a credit search. Everyday concluded these loans were affordable and therefore it hadn't made an error when they were advanced.

The complaint was referred to the Financial Ombudsman where it was considered by an adjudicator. The adjudicator thought the complaint should be partly upheld. He thought Everyday ought to have carried out further checks before loan 1 was advanced because of the term, and Mrs H had recently had a County Court Judgement and a defaulted recorded against her. However, the adjudicator couldn't uphold this loan as he didn't have anything from Mrs H to show what her actual financial position was at the time.

However, the adjudicator did uphold loan 2 because the bank statements provided to Everyday by Mrs H as part of her application showed a lower disposable income than for loan 1, and there were signs of "*financial struggle*" mainly due to the overdraft charges and the way she operated her bank account.

Mrs H's representative acknowledged the assessment, but no further comments were provided.

Everyday didn't agree and in summary it said Mrs H's overdraft was relativity small and she never exceeded it. There was also a lot of discretionary spending on the account which would suggest Mrs H wasn't having financial difficulties.

As no agreement could be reached the case has been passed for a final decision.

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 of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching 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 Mrs H would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mrs H would have been able to do so?
- Did Everyday act unfairly or unreasonably in some other way?

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Mrs H's ability to make the repayments under the loan 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 these loans would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mrs H 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 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 Mrs 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.

In light of this, 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 of the arguments, evidence and information provided in this context and what this all means for Mrs H's complaint.

Neither Everyday nor Mrs H's representative disagreed with the adjudicator's assessment about loan 1. And so, I no longer believe this loan to be in dispute and so I won't be making a finding about it. Instead, this decision will focus on whether Everyday should or should not have advanced loan 2.

Loan 2

This loan was taken on the same day loan 1 was repaid, as around £685 of the funds advanced went towards repaying loan 1 and Everyday also issued a cheque for just over £1,500 which was to be used by Mrs H to repay the balance on her credit card. As part of her application, Mrs H told Everyday the loan was to be used to debt consolidate and to purchase a puppy.

But Mrs H was borrowing more than twice the amount, over twice the term as loan 1, and her monthly repayments were also around £100 per month more. I've kept this in mind when thinking about the checks Everyday carried out.

As part of the application, Mrs H declared her employer and her monthly income. Everyday used a monthly income figure of £1,235.23 – which it verified through reviewing her bank statements – so it knew this figure to be accurate.

Everyday then calculated her monthly expenditure, taking into account the information Mrs H had provided (such as renting from parents), information from the Office and National Statistics (taking account the averages for someone in the same postcode, number of dependents and houseful status) and it then added a buffer to this amount to deal with any unexpected costs.

Overall, when taking into account her living costs, her credit commitments following her credit card being repaid as well as her Everyday loan repayment, it calculated Mrs H was left with around £150 per month in disposable income. But this is a smaller amount of disposable income compared to Mrs H's first loan and this loan was due to be repaid over a much longer period of time and was therefore a much larger commitment.

A credit search was also carried out by Everyday and it has provided a summary of the results. These results showed a County Court Judgement was awarded against Mrs H in July 2017 and settled by December 2017. Everyday was also aware that Mrs H had three defaults recorded on her credit file and all three had been reported in 2018 and two of them had been reported within the year preceding loan two being advanced.

Although the defaulted accounts were for relatively small sums, it does show that not that long before this loan was approved (and while she was repaying loan 1) Mrs H had, missed a sufficient number of payments on the two most recent defaults for action to have been taken by the credit providers. A sign, that Mrs H was likely having financial difficulties.

While Everyday knew Mrs H's overall indebtedness had reduced compared to loan 1, this loan, given its value was adding significant amounts of debt to Mrs H – even taking into account the consolidated credit card account.

On its own, the credit search results weren't enough to say that Everyday shouldn't have lent but taken with the other information that it had available, it was building a picture of someone who was likely to struggle to repay the loan sustainably.

There were also some minor repayment issues on loan 1, for example in August 2018 when a repayment was returned as unpaid, but, Mrs H did make up these payments and there doesn't appear to have any further interest, fees or charges added to the account as a result of this.

Everyday also calculated that after this loan was approved, Mrs H was committed to spending around 30% of her income each month just on credit commitments, and before any other costs that Mrs H had. This was a not an insignificant percentage and, in some cases, on its own would be a sufficiently high amount to lead me to conclude the loan was unsustainable for Mrs H. However, in this case, given what Everyday knew about her living arrangements I don't think this percentage (on its own) would be enough to uphold the complaint, but is something that I've kept in mind when reviewing the bank statements.

As part of the application process Everyday also gathered bank statements from Mrs H – it had statements from 1 September to 31 October 2019 – two months before this loan was approved. In the bank statements I can see a similar pattern each month. Mrs H was overdrawn by payday by around £250 (and was incurring daily overdraft chargers – I accept these are no more than 38 pence per day but towards the end of the month, the majority of the bank statements entries relate to charges).

Then Mrs H received her salary and settles her bills such as rent, credit card, car insurance and repaying a family member who she had borrowed money from. After these payments, Mrs H was left with very little around £100 - £150 to get her through the rest of the month within days of being paid. Although, she may have had a small overdraft limit, Mrs H would be making use of this facility fairly quickly after being paid. In my view, this wasn't and isn't a sustainable situation.

On top of what Everyday could see in the bank statements, there is also the issue of the defaults that were applied a year before, and there is nothing to suggest that Mrs H had either repaid the balances or was in the process of making arrangements to clear what she owed.

Overall, I do think, given what the bank statements show, the credit check results and thinking about the commitment Mrs H was entering into, there would've been a real risk that making the commitment for four years was unsustainable in the long term. Therefore, I do think Everyday was wrong to have granted this loan.

I've outlined below what Everyday needs to do in order to put things right.

Putting things right

I think it is fair and reasonable for Mrs H to repay the principal amount that she borrowed in respect of Loan 2, because she's had the benefit of that lending. But as I have concluded Everyday shouldn't have provided this loan, it should look to remove the interest and fees from the amounts due under the loan agreement.

If Everyday has sold the outstanding debt, it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debt, it should liaise with the new debt owner to achieve the results outlined below.

Everyday should:

- remove all interest, fees and charges applied to loan 2;
- treat any payments made by Mrs H as payments towards the capital amount;
- If Mrs H has paid more than the capital then any overpayments should be refunded 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 Mrs H and I would remind it of its obligation to treat her fairly and with forbearance if necessary; and
- remove any negative information about loan 2 from Mrs H’s credit file.

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

My final decision

For the reasons given above, I uphold Mrs H’s complaint in part and require Everyday Lending Limited trading as Everyday Loans to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 2 March 2023.

Robert Walker
Ombudsman