DRN-4016189

## The complaint

Mr L, through his representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly.

## What happened

Mr L was approved for two loans and there was a gap in the lending relationship between the two. And so, I have considered them as two separate loan applications and not part of one loan chain. Here is a table showing some brief information about the loans.

| Loan | Approved | Capital lent | Total to pay | Repayment | Term | Date repaid |
|---|---|---|---|---|---|---|
| 1 | 30 July 2016 | £3,000 | £6,476.04 | £179.89 | 36 months | 30 September 2019 |
| Break in lending relationship | | | | | | |
| 2 | 7 April 2022 | £5,000 | £8,837.76 | £368.24 | 25 months | open |

After Mr L had complained, Everyday Lending replied with its final response letter (FRL) on 14 November 2022. It made it clear that both loans had been applied for and taken to consolidate a great deal of debt Mr L already had with other lenders.

On loan 1 it was to consolidate six high cost instalment loans and two credit cards. He earned £1,142 a month, had no dependents, and lived at home with his parents.

For loan 1 the formula used to work out Mr L's household expenses was to use 35% of his net income (with a minimum of £500 and a maximum of £1,000). It said in the FRL:

> *'Your monthly financial commitments together with your general living expenses as detailed above, was calculated £1561.68 prior to the consolidation of any debt. My affordability calculation shows he had a monthly disposable income of £179.71 after taking into account consolidated loans and Everyday Loans monthly repayments'.*

Everyday Lending had taken the similar approach to loan 2 when Mr L applied to it again for the same thing – to consolidate a lot of debt using its capital. Mr L wanted to consolidate five high cost loans and clear a credit facility account with a lender. Mr L was confirmed as earning £1,541.84 a month, no dependents and lived with his parents.

This time Everyday Lending used Office of National Statistics (ONS) data to calculate what it referred to as a 'baseline' figure for his living expenses. It went on to explain in the FRL:

> *'The baseline figures are then verified using information on the bank statement presented by the customer and adjusted accordingly. This approach therefore gives a more accurate reflection of living expenses. We also apply a buffer to the living expenses amount to accommodate any unexpected minor changes in the customer's*

*circumstances or one-off additional expenses….his approximate monthly expenditure was calculated as £2024.13 prior to the consolidation of any debt.*

*Our affordability calculation conducted at the time showed he had a monthly disposable income of £361.31 after considering consolidated loans and Everyday Loans monthly repayments.'*

Everyday Lending's conclusion was that it had done all it needed to do and Mr L was going to be able to make the repayments for its loans *'without undue difficulty…assuming there is no significant unforeseen change in circumstances and no drastic increase in borrowing.'*

Mr L's representative referred his complaint to the Financial Ombudsman Service in November 2022 and one of our adjudicators considered it. He thought that Mr L was so seriously in debt that the fresh loans were not of any help to Mr L and having looked at the loans being consolidated, still he thought that Mr L was not going to be able to afford them sustainably.

Everyday Lending sent additional evidence about loan 1 our adjudicator had not seen before but that did not alter his view. It maintained that the consolidation assisted Mr L and so it asked for an ombudsman to review the complaint.

The unresolved complaint was passed to me to decide. On 31 March I issued a provisional decision in which I gave reasons why I considered that the evidence I had led me to provisionally conclude that only loan 2 ought to be upheld in this complaint.

I gave time for both parties to respond and in the body of the provisional decision I did ask for additional information to clarify two points. Neither party has responded and so I have received no additional evidence or submissions to lead me to alter that view.

So, this final determination is in the same terms as the provisional decision. It is set out below. The only change relates to what I said about the division of the £3,000 loan capital on loan 1. The figure used to pay off previous debts and the cash advance forwarded to Mr L are clarified in this 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 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 L would be able to repay 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 Lending to carry out a reasonable and proportionate assessment of Mr L'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 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 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 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.

Considering 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 the arguments, evidence and information provided in this context and what this all means for Mr L’s complaint.

<u>Loan 1</u>

Mr L applied for and took some payment protection insurance which started on 30 July 2016 but the premium was listed as £0. So, I mention it for completeness but no loss appears to have been established for that secondary loan attached to loan 1.

In 2016 it seems that the system utilised by Everyday Lending when customers applied for loans was a little different in that it used 35% of his net income to provide it with his expenditure figures. And Everyday Lending’s account notes tell me that it did review bank statements. Copies of those have not been provided and so I have read the account notes for that time in 2016 which gives me some details.

Mr L’s bank account had a £1,000 overdraft on it and Mr L used it – and Everyday Lending had noted he exceeded his overdraft limit for 1 to 29 July2016 which was the month he was applying to it.

It also obtained a credit search and I have reviewed that set of results from 2016.

The account notes tell me that Mr L had been assuring Everyday Lending he’d got into a bit of a mess taking too many payday loans and so this loan from it would be used to pay them off and would assist in controlling his finances and he told Everyday Lending he'd not use payday loans again.

Another entry which causes me concern is where it's noted that '… *would not go dma as didn't want to ruin credit file…and by paying them off from our loan proceeds ….will assist in controlling his finances and will not use again '*

Reference to 'dma' is a debt management arrangement (DMA) or he may be referring to a debt management plan (DMP).

Another account note states-

> *'BRANCH MANAGER APPROVAL / RECOMMENDATION tight close out good paid* [other lender] *loan and historic credit pdl usage explained and will not use again a1 score not highly indebted saving customer money on monthly out goings'*

The other lender referred to in this note and which I have removed for privacy reasons is the bank loan marked with a star in the second table below – as this note leads me to think this loan had been paid off.

I consider it to have been obvious that Mr L was not good at managing his money as despite having relatively few household expenses (as he lived at home with his parents and had no dependents) then still he had found himself in the position where he was exceeding his overdraft and had not enough cash to pay for the existing debts.

Added to which I'd consider that Mr L was a modest earner (his declared net income was £1,142) and so his chances of drifting back into debt even after taking the Everyday Lending loan were high.

On the affordability front, Everyday Lending says that the pounds and pence calculations in its income and expenditure (I&E) assessment showed Mr L could afford it. And it has sent to us a debt table. I've decided it's important to demonstrate here the consolidation of Mr L's debt that was planned and carried out. It demonstrates why Everyday Lending is maintaining that its loan assisted Mr L. The ones here were paid using a cheque from Everyday Lending. I've rounded the figures.

| **Loan and type** | **Balance (rounded)** | **Settlement sum (rounded)** | **Usual monthly repayment** |
|---|---|---|---|
| Loan – high cost instalment lender | £181 | £181 | £181 |
| Same lender as above | £242 | £242 | £176 |
| Credit card | £467 | £507 | £15 (minimum) |
| Payday lender – loan | £54 | £54 | £33 |
| Same lender as above | £124 | £47 | £64 |
| Same lender as above | £250 | £141 | £98 |
| Same lender as above | £500 | £370 | £189 |
| Bank credit card | £747 | £747 | £22 |
| | | | |
| **Totals:** | **£2,565** | **£2,289** | **£778** |

Mr L took a loan of £3,000 and documents I have seen show that he received a cash advance of just over £711 - the balance was used for the consolidation of the other loans.

This table shows what Mr L still had to deal with as well as the Everyday Lending loan 1.

| | | | |
|---|---|---|---|
| Loan – payday lender | £33 | £33 | £33 |
| telecoms contract/loan | £250 | £0 | £25 |
| bank loan * | £1,257 | £1,257 | £149* |
| Payday loan (now settled) | £310 | £310 | £310 # |
| Bank current account | £0 | £0 | £0 |
| | | | |
| **Totals** | | | **£207 (excluding payday loan settled) #** |

# this may not have been a monthly commitment going forward for Mr L as the note in the Everyday Lending debt table suggests this was settled. Even if it was it would not alter my view on affordability.

*The account note referred to earlier in this decision does indicate that the item marked with a star in the above table was a bank loan that Mr L had paid off. In the absence of any other information I have proceeded on that basis.

And so, it's very likely that after taking loan 1, Mr L's commitments were that he had to repay £33 for one month more on one loan, continue paying for his telecoms loan contract of £25 and the Everyday Lending loan of just under £180 per month. So that radically alters Mr L's cash-flow situation going forward.

So, this is what I think about loan 1. That the debt consolidation was based on solid foundation and I do not think that Everyday Lending did the wrong thing here.

I do not uphold Mr L's complaint about loan 1.

*What happened in-between loans 1 and 2*

Mr L contacted Everyday Lending a few months after taking this loan in March 2017 to say that he needed a top-up of £1,000 and had been using payday loans again and had a friend who'd be a guarantor for him. I do not see that anything proceeded with that with Everyday Lending but it's very feasible Mr L applied elsewhere.

Added to which, in June 2017 and again in August 2017 the direct debit for the payments for his first Everyday Lending loan failed due to insufficient funds and Mr L's reaction was that he was *'short'* and he'd see if he could borrow from his dad.

Reviewing Mr L's credit file for the period between July 2016 to when he approached Everyday Lending again in April 2022 then Mr L had been taking a series of loans all through the time he had been paying off loan 1. Mr L had an account which defaulted in September 2020. Mr L had demonstrated that he was not staying away from payday loans at all and had failed to make the payments on this loan 1 twice.

<u>Loan 2</u>

Everyday Lending was approached by Mr L for a second loan of £5,000 in April 2022. Everyday Lending said it obtained and reviewed Mr L's bank statements for two months and carried out a credit search. It also checked where he worked. Everyday Lending said it used ONS statistical data and figures to calculate the living expense element of affordability. This calculation took into consideration the customer's income, region, household composition and residential status. It said its affordability calculation showed that Mr L would have a monthly disposable income of just under £362 after considering his new Everyday Loan monthly repayments.

The need for repayments to be sustainable meant Everyday Lending needed to ensure Mr L could meet any repayments without undue difficulty and without having to borrow further. Everyday Lending had the advantage of all the account notes during and since taking (and paying off) loan 1.

Plus, it was able to use the 2022 credit search results to track what Mr L had been doing with his debt management since he had taken the first loan in 2016. Some of what Mr L did in-between loan 1 and loan 2 are noted in the Everyday Lending account notes. And I have listed in the earlier section of this decision (*What happened in-between loans 1 and 2)* what Mr L had been doing as revealed by the notes and his credit search results.

For loan 2, I have been sent copies of the bank account statements Everyday Lending had reviewed at the time Mr L had applied for loan 2. These further illustrated Mr L's situation. During February 2022 and March 2022 Mr L's account was credited from other lending companies with six new loans plus he made multiple draw downs on the lender with which he had a credit facility.

Mr L's bank statements show me that two payments to two other lenders were returned unpaid in mid-March 2022. Everyday Lending has told us it knew Mr L was in serious financial difficulty then. Despite all the information it had its 'solution' was to lend again to Mr L.

As Mr L was using several payday lenders and/or high-cost loan providers to supplement his income, I think his financial situation was probably deteriorating at that stage and he was likely to struggle to make the repayments under this new loan. And I think he was highly likely to be borrowing again.

Even after repaying some of his debt, Mr L would still need to have used a significant share of his income to service his remaining debt each month suggesting a risk of unsustainability. So, I don't agree that further lending would've been sustainable to Mr L at this time.

I uphold Mr L's complaint for loan 2.

**Putting things right**

To put things right Everyday Lending should:

- remove all interest, fees and charges applied to loan 2,
- treat any payments made by Mr L in respect of these loan as payments towards the capital amount of £5,000
- If Mr L 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 L.
- remove any adverse information about Loan 2 to date but going forward and until it is paid off loan 2 will continue to be reported to the credit reference agencies as normal.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mr L 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 L's complaint in part and I direct that Everyday Lending Limited, trading as Everyday Loans should do as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 May 2023.

Rachael Williams
**Ombudsman**