DRN-3463409

The complaint

Mr E complains through his representative that Everyday Lending Limited lent him money on a high interest loan which he was unable to afford to repay.

What happened

Everyday provided Mr E with a loan on 28 January 2019, for £5,500, repayable in 36 monthly instalments of around £272.

Mr E got into difficulties with the repayments, and complained that the loan wasn't affordable to him.

Everyday said the loan was taken out to consolidate some of his credit commitments. In assessing the affordability of the loan it had taken into account:

- One month's bank statement from Mr E's primary bank account.
- A Credit Search.
- A job check, verifying Mr E's employment and income, from payslip and a letter from his employer confirming his new salary from his new job starting in November 2018.
- An assessment of Mr E's outgoings using ONS (Office for National Statistics) data.

It calculated that the loan was affordable for Mr E.

Our adjudicator thought that Everyday had completed reasonable and proportionate affordability checks. He didn't think it was wrong for Everyday to lend to Mr E because its checks showed the loan would likely be affordable and sustainably repaid.

Mr E didn't agree. He felt Everyday hadn't taken into account a number of payday loans, the fact that he had just changed his job and he was on a lower monthly pay than Everyday assessed, and payments on a loan he had taken out in September with an associated company. He also said his bank statements showed money taken out for gambling.

I issued a provisional decision. In it I said that It was my view that Everyday carried out proportionate checks. However on the basis of the checks it did, I didn't think the loan was shown to be sustainable. I didn't think Everyday made a fair lending decision.

Neither party commentedomn my prpvsisoanl 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.

These were my provisional findings:

"*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 E would be able to repay the loan in a sustainable way?*

- *If not, would those checks have shown that Mr E 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 E's ability to make the repayments under the agreement. 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 loan would be sustainable. In practice this meant that Everyday had to ensure that making the repayments on the loan wouldn't cause Mr E 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 E. *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).*

When Everyday carried out its affordability assessment, it calculated that Mr E was liable for total monthly payments of about £1,995 for his credit commitments, about 58% of his assessed income of £3,418. It calculated that his disposable monthly income was -£261. It further calculated that by paying off two loans and a mail-order account the latter figure, with the new loan instalment would be about +£155. Though his credit commitments would still be quite high – about 39% of his income.

Although Everyday did take the payments for its associated company's previous loan into account, I can't see that it considered why Mr E, having received that loan which was for £14,000, left him in a position where he didn't appear to have paid off loan accounts and ended up with a negative disposable income. From his bank statements it appears that his account was running an overdraft and that this only didn't increase because of the loans he had had. Further the two major loans he was paying off had only been taken out respectively in November and December 2018.

Although there's no indication in the statements of any gambling, there were a considerable number of payments to an online payment service which effectively left Mr E with no disposable income at the end of the month.

Mr E as far as I can see, did pay off the loans he had intended to consolidate with the Everyday loan. And this did reduce his immediate credit commitments. However, his two wage payments for November and December averaged just £3,175 (which Everyday had estimated at £3,418). So, leaving a disposable income of just £155 a month with such a high degree of credit commitments made this loan in my view unsustainable.

It's my view that Everyday carried out proportionate checks. However on the basis of the checks it did, I don't think the loan was shown to be sustainable. I don't think Everyday made a fair lending decision."

As neither party has commented on my provisional findings, those findings are now final and form part of this final decision.

Putting things right

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

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr E as payments towards the capital amount of £5,500.
- If Mr E 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.
- But if there's still an outstanding balance, Everyday should come to a reasonable repayment plan with Mr E.
- Remove, as appropriate, any adverse information about the loan from Mr E's credit file.

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

My final decision

I uphold the complaint and require Everyday Lending Limited to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 2 June 2022.

Ray Lawley
Ombudsman