DRN-3516564

The complaint

Mr O has complained through a representative that Everyday Lending Limited (Everyday) mis-sold him loans he couldn't afford to repay. He says at the time he had a poor credit history and was using multiple high cost, short-term loans.

What happened

Mr O had two loans from Everyday and a summary of the lending can be found in the table below.

loan number	loan amount	agreement date	repayment date	term (month)	monthly repayment
1	£1,500.00	23/09/2016	13/10/2017	24	£165.62
2	£3,000.00	13/10/2017	20/12/2020	24	£312.66

Everyday issued its final response letter about Mr O's complaint on 16 December 2021, Everyday concluded it hadn't made an error when it approved these loans.

Everyday said it carried out its normal verification checks, which included obtaining a credit report, verifying Mr O's income and payslips and bank statements. It also calculated his expenditure using ONS (Office for National Statistics) with a minimum of £500 and a maximum of £1,000. Everyday says it regards 35% as the national average. It also added £80 per month per dependent.

For loan one, Everyday concluded that Mr O's outgoings were broadly at the same level of his income. But the loan would be affordable as it would go towards repaying some loans that Everyday was aware of. After doing this, it would've left Mr O with around £600 per month in disposable income.

For loan 2, Everyday says it carried out the same sort of checks this time, concluding that Mr O had around £225 per month in disposable income. So, the loan also looked affordable for him.

Unhappy with this response, Mr O's representative referred the complaint to the Financial Ombudsman Service.

Mr O's complaint was considered by one of our adjudicators and he didn't uphold it. He said Everyday lent responsibly because there were no signs that Mr O was having or likely to be having financial difficulties and Mr O had sufficient disposable income to be able to afford the repayments, he was committed to making.

Everyday acknowledged receipt of the adjudicator's assessment.

Mr O's representative didn't agree with the outcome. In response it said (in summary):

- Four defaults were recorded on Mr O's credit file in 2017.
- Mr O was dependent on high cost short-term credit and Mr O was repaying another

high cost credit provider at the same time.
- In August and September 2016 there were returned direct debits.
- All these factors indicate that Mr O was having financial difficulties.

As no agreement could be reached, the complaint was passed to me to resolve.

I then issued a provisional decision explaining the reasons why I was intending to uphold Mr O's complaint in full. A copy of my provisional findings follows this in italics and form part of this final decision.

What I've provisionally 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 Mr O would be able to repay the loans in a sustainable way?*
- *If not, would those checks have shown that Mr O 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 Mr O'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 the loans would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loans wouldn't cause Mr O 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 O. Checks also had to be "proportionate" to the specific circumstances of the loan applications.

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 Mr O's complaint.

Loan 1

For this loan, Everyday asked Mr O for his monthly income, which he declared as being £2,588. Everyday then verified this through seeing a copy of his bank statements and so Everyday had an accurate idea of Mr O's monthly income.

Everyday has then shown that Mr O's living costs – which included his outstanding credit commitment – came to £2,579. So, without taking this loan Everyday was already on notice that Mr O was left with very little disposable income each month.

Everyday says the loan was for consolidation purposes, and the notes it provided – which were made by a member of staff – state Mr O was going to repay one longer term loan as well as clearing his outstanding payday / home credit loans, and a couple of companies are then listed within the notes.

Everyday seems to suggest, that had Mr O used the loan for consolidation of his debts then after the repayment to Everyday Mr O would actually have a significant amount of disposable income, around £608 per month. Everyday would've reasonably concluded that the loan payments would then be affordable.

But I think there was enough information available to Everyday from the credit search and the bank statements to suggest that Mr O was having significant financial problems given his apparent reliance on high cost credit.

Everyday carried out a credit search and it's provided the full results to the Financial Ombudsman. Having looked at these results it showed that Mr O did have, in my view a significant number of outstanding credit commitments from payday loans, to home credit loans as well as credit cards.

It's worth noting here, that Everyday was aware that there was a County Court Judgement recorded against him in 2011, but this had been satisfied in 2013, so I don't think Everyday would've been concerned by that.

As part of the application process Everyday also took copies of Mr O's bank statements from July and August 2016 – so the statements in the months before the loan was approved.

These bank statements show that Mr O had a number of outstanding short term and high cost credit commitments that he was servicing each month. Based on the statements he had at least five outstanding by the end of August 2016.

I've also been provided with Mr O's actual bank statements from the end of August until September 2016 – when the loan was approved. It looks like that in September a further two high cost loans were approved so when Mr O was provided with his loan of £1,500 he had at least 7 loans outstanding at the time.

In addition, Everyday was aware that Mr O had a returned payment in August towards a high cost credit provider – it seems because he didn't have sufficient funds to make it. And looking at the September statements provided by Mr O he had at least one other payment returned – for his energy bill. As Everyday knows, the industry regulator suggests that missing payments toward credit commitments could be a sign of financial difficulties.

Everyday says the lending was for debt consolidation. However, and it's worth saying this here that it seems Everyday released the full amount to Mr O – so it had no way of knowing whether Mr O would consolidate the debts that Everyday expected him to. Everyday could've as far as I'm aware made those payments on behalf of Mr O.

Although this wasn't to be known to Everyday I have reviewed bank statements in the month after the loan was approved to see what Mr O did with the funds – so did he consolidate the debts and what was his general financial position?

I can see that almost £1,000 of the loan went to repay one outstanding pay day loan. However, there doesn't appear to have been any further loans repaid, indeed, it looks like that since Mr O had been provided with his loan by Everyday he had taken new, high cost credit loans. He drew down a new loan of over £1,000 after this loan was granted.

I accept that Everyday wouldn't have known this at the time the lending was approved, but I do think there were signs in the bank statements such as the large number of high cost credit as well as the returned payments that would've indicated to it that Mr O was having or likely having problems managing his money. So, in my view it was inevitable that further loans would be granted to Mr O from other companies.

Overall, I'm intending to uphold Mr O's complaint about this loan. His statements show a sustained period of using high cost loans – and even after he had taken this loan from Everyday he didn't appear to have used it to repay all the loans he said he would. Indeed, and I appreciate Everyday wouldn't have known this, he actually started to borrow from new lenders.

So, for the reasons set out above, I don't think Everyday should have provided Mr O with this loan.

Loan 2

Everyday carried out the same sort of checks for this loan as it did for loan 1. It took copies of bank statements in the months leading up to the loan, carried out a credit search and took a copy of a recent payslip from Mr O.

Like loan 1, Mr O declared that this loan was for consolidation purposes, for both high cost credit but also to repay the outstanding balance that Mr O had with Everyday for his existing loan.

After carrying out its checks, as outlined above, Everyday based the affordability check on an income of £3,069. With all outgoings including rent, living costs and outstanding credit commitments Everyday said these came to £3,296. So, at this point Everyday believed that Mr O was spending more than his income each month on repaying his loans, rent and living costs.

This loan was only affordable to Mr O if he consolidated around £900 of his outstanding commitments, which is what Everyday suggested would happen and seems to be the outstanding balances of his payday loans.

If he did repay the debts Everyday expected, the loan would've looked affordable for him because it calculated – with the repayment of this loan he would've had £225 per month of disposable income.

Indeed and it is worth saying that the notes provided by Everyday suggest it had some reservations about lending to Mr O given the continued appearance of payday loans on his bank statements.

Those checks ought to have highlighted some significant financial difficulties. Since loan 1 was advanced, Mr O continued to take high cost loans, indeed, when this loan was approved, it seems he still had outstanding payday loans. Despite loan 1 being used to repay most of his outstanding payday loans, Mr O had continued to use payday loans in the time between loans.

This is supported by the bank statements that Everyday took prior to this loan being granted showing that at the end of September 2017 Mr O had at least four outstanding payday loans.

This means Everyday was on notice that he had been a regular user of such loans for at least the previous 15 months (from July 2016 which it had bank statements for). Despite these being for short term use, Mr O was demonstrating that his financial difficulties were longer term given the number and frequency of such loans.

This would indicate that whatever financial difficulties Mr O was having at the point of loan 1 continued up to the point loan 2 was granted.

In addition, Everyday's credit results show at least four defaults in the months leading up to this loan being advanced, and this is supported by the information I've seen from Mr O's full credit report provided by his representative.

The credit file provided by Everyday also shows that Mr O continued to use other forms of high cost credit after loan 1 was approved – which is further supported by what I can see in Mr O's actual credit report and from copies of his bank statements.

Taking all of this together, even after loan 1, Mr O continued to make use of other forms of high cost credit, and these were still on his bank statements a year later. Added to the fact that the loan was only affordable if Mr O had repaid the payday loans and he'd shown that even if did that he would likely return for further borrowing. This has led to me to conclude that Everyday shouldn't have provided this loan as well because the lending was no longer sustainable for him.

I'm therefore intending to uphold Mr O's complaint about this loan as well.

Response to the provisional decision

Both Mr O and Everyday were asked to provide anything further for consideration as soon as possible, but no later than 6 June 2022.

Everyday didn't provide a response to the provisional decision.

Mr O's representative told us it accepted the outcome that I was intending to reach.

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.

As no new comments, information or evidence have been provided by Everyday and Mr O accepted the provisional findings, I see no reason to depart from the findings that I reached in the provisional decision.

I still think Everyday shouldn't have provided either loan to Mr O because it was presented with information which in my view suggested that Mr O was having financial difficulties due to the number of outstanding high cost loans. I'm therefore upholding Mr O's complaint, in full.

I've set out below what Everyday needs to do in order to put things right for Mr O.

Putting things right

I think it is fair and reasonable for Mr O to repay the principal amount that he borrowed in respect of Loans 1 and 2, because he'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.

Everyday should:

- remove all interest, fees and charges applied to both loans;
- treat any payments made by Mr O as payments towards the capital amount;
- If and when Mr O has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date the overpayments arose to the date of settlement; and
- remove any negative information about these loans from Mr O's credit file.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr O's complaint.

Everyday Lending Limited should put things right for Mr O as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 July 2022.

Robert Walker
Ombudsman