

The complaint

Mr W has complained about guarantor loans granted to him by Everyday Loans Limited trading as GeorgeBanco.com (“EDL” or “the lender”). Mr W says the loans were unaffordable and it was irresponsible of EDL to have provided them.

What happened

EDL agreed two loans for Mr W: a loan of £1,600 in May 2015 and a second of £3,000 in August 2016. The first loan was to be repaid over three years with monthly repayments of about £86. The second loan was used to partially repay the first and was also to be repaid over three years with monthly repayments of about £146. The loans were secured by a guarantor.

Mr W says that he could not afford the repayments for either loan and that EDL would not have agreed to lend to him, had it carried out a proper assessment of his financial circumstances each time.

Our adjudicator assessed the complaint and recommended that it be upheld. She recommended that EDL refund all repayments Mr W paid above the total capital granted, along with 8% simple interest per annum.

EDL didn't agree that it was irresponsible when it lent to Mr W because it says all the necessary checks were carried out prior to agreeing his loans. So the complaint has come to me, as an ombudsman, to review and resolve.

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. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having done so, I am upholding Mr W's complaint in full for broadly the same reasons our adjudicator did. I appreciate this will be very disappointing for EDL and I hope my explanation below makes it clear why I have come to this conclusion.

The Financial Conduct Authority (FCA) was the regulator when EDL lent to Mr W. Its rules and guidance obliged EDL to lend responsibly. As set out in its Consumer Credit Sourcebook (CONC), this meant that EDL needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement. Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit

being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

It is important to note here that the FCA didn't, and doesn't, specify exactly how the assessment is to be carried out but the "*extent and scope*" and the "*types and sources of information to use*" needed to be enough to be able to reasonably assess the sustainability of the arrangement for the borrower.

In other words the assessment needs to be borrower-focussed. It is not an assessment of the risk to the lender of recouping its money, but of the risk to the borrower of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend. So even in this case, where Mr W had provided security for his loan in the form of a guarantee and indemnity agreement, this didn't absolve EDL of its obligation to assess whether in the first instance Mr W could meet his repayments without undue difficulty over the term of the loans.

As set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. Therefore, a lender's assessment of creditworthiness would likely need to be flexible – what is appropriate for one person might not be for another, or indeed what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the *lower* a person'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).
- the *greater* the number and frequency of loans, and the longer the period of time during which a person has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Mr W's case, I have considered the following questions:

- did EDL complete reasonable and proportionate checks when assessing Mr W's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did EDL make fair lending decisions?
- did EDL act unfairly or unreasonably in some other way?

Did EDL complete reasonable and proportionate checks?

EDL says it gathered information from Mr W about his income and his rent. It calculated an amount for his general living expenses and gathered some information about his existing credit commitments from his credit file. The customer records show that Mr W was running a household and had a dependent. EDL provided some of the information it used in its assessment for his first loan and I've summarised this below (with numbers rounded).

Income	£1,650
Rent	£500
Creditor repayments	£388
Calculated living expenses (% of income)	£579
Cost of EDL loan 1	£86
Remaining or disposable income	£97

EDL says that its assessment showed that the monthly loan repayments of about £86 would be affordable for Mr W. I note, however, that its calculations showed that Mr W would have a relatively low amount left over each month to meet any one-off or seasonal expenses, or indeed any likely increases in expense over the three year lifetime of the credit agreement. I don't think it was fair to make a lending decision on this basis, given Mr W's circumstances, without taking further steps to verify the information it had about his income and expenditure.

In addition, Mr W had explained that the purpose of the loan was partly to repay debts which were in default. EDL has provided the results of its credit file check from around that time and it shows that Mr W had about £1,000 of historic debt, which it doesn't seem he'd been making any inroads into. I appreciate that having some historic debt isn't automatically a barrier to taking on further credit. However, in this case, given the loan purpose, I think EDL ought to have taken further steps to check that Mr W would be able to meet its repayments sustainably, given he wasn't potentially able to clear his existing debts without borrowing again.

So, altogether, I don't think the checks EDL carried out on this occasion were proportionate and it needed to do more in order to reasonably assess the risk to Mr W of not managing to meet his repayments sustainably.

What would reasonable and proportionate checks have shown and did EDL make fair lending decisions?

Our adjudicator upheld Mr W's complaint because she found it would be unlikely that he'd be able to meet his repayments for his first loan sustainably, based on the relatively low amount he'd have left over each month. I agree with that likelihood, bearing in mind that Mr W needed to meet this level of repayment each month for three years and that the lender knew that he had a dependent.

Mr W has provided copies of his bank statements. To be clear, I don't think EDL ought to have asked Mr W for these in order to make its lending decision. But in order to make a fair lending decision I think it needed to do more than it did to assess the sustainability of the loans for him. I've considered what I think EDL was likely to learn, had it carried out a proportionate check and I think Mr W's bank statements are a reasonable proxy for that information.

I can see from these that Mr W's income was around what he'd told EDL but his living expenses were higher and that he was spending a considerable amount repaying existing debt – for example he'd repaid several thousand pounds to a credit card over the previous two months. It's also clear that Mr W was spending regular amounts on what appear to be gambling transactions, either directly from his bank account or via online payment systems. Other available information shows that Mr W's historic debts were higher than they appeared on EDL's credit search results and that he'd taken out another guarantor loan the previous month.

Had EDL considered fully the information it had and enquired further into Mr W's financial affairs, I think it would have understood that there was a risk that he would not be able to

meet his repayments for the loan over the lifetime of the agreement in a sustainable manner. And so I find that it was irresponsible to have agreed to lend to him on this occasion.

Mr W took out a second loan with EDL about a year later, in August 2016. Our adjudicator upheld his complaint about this loan because it was used to repay his first loan and as such would not have been granted if the first one hadn't. I understand that it was used in part to repay his first loan and have considered the matter further.

EDL says that Mr W told it his income was now £1,700 and it checked his credit file and calculated an amount of living expenses, as with his first loan. EDL concluded that Mr W would have an amount of about £130 left over each month having paid all his expenses, including its loan.

EDL provided the results of a credit search, which appears to have been carried out mid-2017, about a year after this second loan was granted. I can see from this that Mr W's finances hadn't improved by the time of his second loan and it seems he was yet more indebted. Not only had some of his historic defaults remained unpaid, he had a default from the previous year and had recently taken on new credit from several lenders, including high cost and short term lenders, amounting to over £7,000. The credit record shows that he'd recently had an arrangement to pay in place on one of his loans, which seems to be EDL's first loan.

As before, I think had EDL considered fully the information it had available and enquired further into Mr W's financial affairs, it would have learned that there was a risk that he would not be able to meet his repayments for the loan over the lifetime of the agreement in a sustainable manner. And so I find that it was irresponsible to have agreed to lend to him on this occasion also.

Did EDL act unfairly or unreasonably in some other way?

Mr W has explained that his struggles with his financial affairs had a very serious impact on his health. I understand he made EDL aware of the extent of this when he first complained to it. I don't doubt that Mr W has had a very difficult time of it and I am sorry to hear of this. I have considered whether any compensation should be awarded to him because of the serious difficulties he's had to deal with. However, neither EDL nor Mr W have said anything which makes me think the lender might, or should, have been aware of his health issues either when it agreed to lend to him or during the course of his loans. So I will follow this Service's usual approach to redressing irresponsible lending decisions, which I've set out in detail below.

Putting things right

I've concluded that EDL was irresponsible to have agreed to lend to Mr W. Where we find a loan to have been agreed irresponsibly, this Service's approach to putting things right is to refund any interest and charges paid by the borrower. In addition, we usually direct the lender to pay a refund of 8% per annum simple interest on these payments where the borrower was unfairly deprived of their money. We'd expect the borrower to repay the capital borrowed as they have had the use of these funds.

In line with this Service's approach, Mr W shouldn't repay more than the capital amounts he borrowed for his loans agreed in May 2015 and August 2016.

To put things right for Mr W, EDL should:

- a. Consider all payments made by Mr W as payments towards the combined capital amount;
- b. If Mr W has made payments above this combined capital amount then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
- c. If there is a shortfall in repayments which leaves a capital amount outstanding, then EDL needs to treat Mr W sympathetically and fairly, which might include coming to a new arrangement about how best to repay this;
- d. Remove any negative information from Mr W's credit file in relation to these loans, once settled.

I understand some of Mr W's second loan was used to repay his first. I don't know if Mr W has fully repaid his second loan or if any balance has been sold to a third-party. In the event, EDL should work with the third-party to bring about the above steps.

* HM Revenue & Customs requires EDL to take off tax from this interest. EDL must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

I uphold Mr W's complaint and direct Everyday Lending Limited (trading as GeorgeBanco.com) to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 June 2020.

Michelle Boundy
Ombudsman