DRN-2043640

The complaint

Mr H has complained about a guarantor loan that was given to him by Everyday Lending Limited (EDL).

What happened

Mr H was given a loan for £6,000 by EDL in March 2019. The loan was due to be repaid in 60 monthly instalments of around £236. The total amount payable, including interest, was just over £14,166. I understand the loan is still outstanding.

Mr H first complained to EDL that it hadn't provided him with a settlement figure when he requested one and that interest was therefore unfairly accruing on his account. EDL agreed that it hadn't processed his request for a settlement figure correctly and it offered him £25.00 as compensation.

Mr H brought his complaint to this service. EDL later agreed that the affordability of Mr H's loan could also be investigated, as part of his complaint.

One of our adjudicators has looked into Mr H's complaint. She didn't think EDL should have provided the loan to Mr H. So she asked EDL to put things right.

EDL doesn't appear to have responded to the adjudicator's assessment. As the matter has not been settled informally, Mr H's complaint has been passed to me 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 approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr H's complaint.

I think there are several overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this particular complaint:

1. Did EDL complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay his loan in a sustainable way? If not, what would reasonable and proportionate checks have shown at the time?
2. Ultimately, did EDL make a fair lending decision?
3. Did EDL act unfairly or unreasonably in some other way?

EDL needed to take reasonable steps to ensure that it didn't lend to Mr H irresponsibly. This means that it should have carried out proportionate checks to satisfy itself that he could repay the loan in a sustainable way. The lender was required to carry out a borrower focussed assessment - sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focussed – so EDL had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr H. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mr H undue difficulty or adverse consequences. In other words, it wasn't enough for EDL to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr 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, such as their financial history, current situation and outlook, any indications of financial difficulty and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the *lower* a customer'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 customer is required to make payments for an extended period); and

- 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 evidence, arguments and information I've seen about this matter and what it means for Mr H.

Did EDL carry out reasonable and proportionate checks? If not, what would reasonable and *proportionate checks have shown at the time?*

EDL carried out some checks before it gave the loan to Mr H. This included asking for details of his income and expenditure and acquiring a credit report. It assessed that the loan was affordable for him.

But Mr H was applying to EDL for an expensive loan which was repayable over a long period. If the loan ran to term, Mr H would have to repay over £14,000. The rules and guidance suggest that the risk of any credit not being sustainable directly relates to the amount of credit granted and the total charge for credit - relative to the customer's financial situation.

From what I've seen, EDL was aware from its checks that Mr H already had a considerable amount of outstanding debt, including hire purchase, credit cards and several open loans. EDL might have been prepared to accept this credit risk because the loan had a guarantor who was equally liable with Mr H. This might have given EDL more confidence that the loan repayments would be made. But I don't think that the existence of the guarantor, on its own, meant that Mr H himself would be able to sustainably make the repayments.

The rules and regulations say that where a lender takes income or expenditure into account, it is not generally sufficient for it to rely solely on a statement of those matters made by the customer. I appreciate that EDL had carried out some checks. But I think in the circumstances EDL ought reasonably to have sought a more detailed understanding of Mr H's financial position in order to assess whether he'd be able to sustainably repay his loan over the extended 60-months loan term. So as well as asking Mr H about the details of his income and expenditure, I think EDL should have verified more of the information he provided – for example by asking to see his bank statements.

Mr H has provided us with copies of his bank statements in the months leading up to his application to EDL, so I can determine what better checks might have shown the lender at that time. And I have considered this information in light of what I've set out above. Of course, different checks might show different things. But I think if EDL had carried out what I consider to be proportionate checks, I think it's likely it would have discovered more about Mr H's financial position. In particular I think it more likely than not EDL would have realised that Mr H had been regularly gambling considerable amounts of money. Mr H's bank statements also show some other evidence of financial distress – including returned requests for payment, arranged and unarranged overdraft fees and other charges. Mr H was also consistently overdrawn and he was borrowing from other short-term lenders.

Taking it as a whole, I think if EDL had carried our proportionate checks it would most likely have discovered Mr H's true financial situation. I think EDL ought reasonably to have realised that Mr H was having serious difficulties managing his finances and that he was most likely borrowing from other lenders as a result of his gambling – and would also most likely need to borrow elsewhere to repay his loan from EDL. I think EDL ought reasonably to have realised that it was unlikely that Mr H would be able to sustainably repay his loan. So it should reasonably have concluded that it was not appropriate to lend to him.

Did EDL act unfairly or unreasonably in some other way?

Mr H has complained about what happened when he tried to settle his loan early. The lender had to treat Mr H positively and sympathetically in these discussions. I am not persuaded that it failed to do so in this respect. I can see that EDL admitted that it didn't process Mr H's request properly at the time so there was a delay in providing Mr H with a settlement figure. But EDL has apologised for its mistake and offered him £25 in compensation. I don't know whether this would have covered the amount of additional interest that Mr H had to pay because of the delay in providing him with a settlement figure. But in any event, I don't need to make a finding on this as I am upholding Mr H's complaint about the loan and directing that any interest charged on the loan is removed from Mr H's account.

Putting things right

I think it is fair and reasonable for Mr H to repay the principal amount that he borrowed, because he had the benefit of that lending. But he has paid interest and charges on a loan that shouldn't have been provided to him. So I think Mr H has lost out and EDL should put things right for him.

EDL should:

a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr H should then be deducted from the new starting balance. If the payments Mr H has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple interest* calculated on any overpayments made, from the date they were paid by Mr H to the date the complaint is settled.

b) If there is still an outstanding balance, then the amounts calculated above should be used to repay any balance remaining on the loan. If this results in a surplus then the surplus should be paid to Mr H. However if there is still an outstanding balance then EDL should try to agree an affordable repayment plan with Mr H, bearing in mind the need to treat him positively and sympathetically in those discussions.

c) Remove any adverse information recorded on Mr H's credit file as a result of this loan.

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

My final decision

Having considered all the evidence provided to me and reflecting on what is most likely to have happened in the circumstances, I uphold Mr H's complaint and direct Everyday Lending Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 October 2020.

Sharon Parr
Ombudsman