DRN-2618775

The complaint

Mr F and Miss P complained that Everyday Lending Limited (EDL) lent to them irresponsibly. They've also complained that EDL didn't treat them fairly when they had difficulties repaying the loan and it was rescheduled with a reduced interest rate but over a longer period.

What happened

I issued a provisional decision about this complaint in January 2021 that I summarise below.

Mr F and Miss P were given a loan of £3,000 by EDL in April 2013. Mr F and Miss P were also sold 'Everyday Life Cover' on credit.

The loan was due to be repaid in around 48 monthly instalments of about £186. The total amount payable, including interest was just over £8,799. I understand the loan is now settled.

I explained the basis on which I would decide the complaint, in particular the checks that EDL needed to do such as the amount being lent, and the consumer's income and expenditure. With this in mind, I thought less thorough checks might be reasonable and proportionate in the early stages of the lending relationship.

I said that EDL was required to carry out reasonable and proportionate checks in order to establish whether Mr F and Miss P could sustainably repay their loan.

EDL asked Mr F and Miss P for information about their income and expenditure; it acquired credit reports and requested bank statements and pay slips. From what I'd seen, I thought the checks that EDL carried out were reasonable and proportionate in the circumstances.

However, on balance, I didn't think that EDL made a fair lending decision on this occasion.

EDL says that Miss P initially applied for a single loan, but she didn't meet the lending criteria, and so her partner Mr F was added to the loan. EDL was made aware during the application process that Miss P's monthly income was variable, so I thought it would reasonably have been aware that her income was likely to fluctuate over the extended loan term.

EDL was also aware from its checks that Mr F and Miss P had at least 10 credit cards between them, most of which had balances either very near or over the credit limit. The credit report for Mr F and Miss P also indicated, in addition to the credit cards, two loans with substantial outstanding balances. The bank statements submitted by the borrowers showed they were also repaying other payday/ short term loans which had been taken fairly recently.

I thought EDL focussed its calculation of whether the loan was affordable for Mr F and Miss P on a pounds and pence basis. But EDL was required to establish whether the borrowers could *sustainably* meet their loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being 'affordable' on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulty – in particular without incurring or increasing problem indebtedness. The customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Mr F and Miss P intended to clear their recent payday loans with the loan from EDL and this consolidation might, to some extent, have partially reduced their monthly outgoings. But I thought EDL ought reasonably to have been aware from the information it had gathered about the level of Mr F and Miss P's outstanding debt, and the number of creditors, that the consolidation of these most recent payday loans was unlikely to help them make sufficient inroads into their existing debt, and in fact it potentially increased their indebtedness.

Even after consolidating their payday/short term loans, Mr F and Miss P would still be committing a substantial percentage of their monthly income to meet repayments to other creditors, which I thought EDL ought to have realised put Mr F and Miss P at high risk of experiencing financial difficulty.

I thought the fact that they had fairly recently taken several credit cards, spent up to their limit and still needed to take other payday loans in the three months prior to applying to EDL, would reasonably have suggested to EDL that these consumers were having serious difficulties managing their finances. And that their financial position was steadily worsening, despite the level of their joint income – which in any event was likely to fluctuate from Miss P's variable income, potentially leading to increased pressure on their finances.

Taking matters as a whole, I thought on balance that EDL ought reasonably to have realised that Mr F and Miss P were finding it very difficult to get out from under their debt problems, and that it was unlikely that they would be able to sustainably repay their loan over the extended loan term. In these particular circumstances, I thought EDL should reasonably have concluded that it was not appropriate to lend to them.

Mr F and Miss P have complained that EDL treated them unfairly when they had difficulties repaying the loan. They told us that following conversations with EDL, their loan was restructured. Mr F and Miss P say they would never have agreed to the arrangement if they had understood that the loan term would be extended and that they would pay more interest. EDL says that it held telephone conversations with Mr F and Miss P when they experienced difficulties repaying the loan. EDL says the loan was rescheduled in January 2015 with monthly repayments reduced to £50 and the APR reduced from 43.9% to 10.1%. EDL says that under this type of arrangement a customer may pay more than the original contract, but they are allowed longer to pay, which it thinks is fair.

I thought it's hard to determine the impact of the loan being rescheduled, given that the loan was repaid early with an interest rebate. This took place several years ago, and there isn't enough evidence available now for me to say that I think EDL treated Mr F and Miss P

unfairly at the time. Overall, I couldn't fairly say that EDL failed to treat Mr F and Miss P positively or sympathetically when it rescheduled their loan.

But taking everything into account, I didn't think EDL should have agreed to provide the loan to Mr F and Miss P. As I provisionally concluded that EDL shouldn't have provided the loan, it was reasonable for me to also conclude that the 'Everyday Life Cover' sold alongside the loan was not required, as there wouldn't have been any loan for this policy to cover. So, the premiums plus interest should also be returned to Mr F and Miss P as set out below.

I hadn't seen anything which made me think that EDL acted unfairly or unreasonably towards Mr F and Miss P in some other way. But they had to pay interest and charges on a loan and pay for the 'Everyday Life Cover' that they shouldn't have been given in the first place. I said I intended to uphold their complaint about the loan and invited the parties to send me any further comment of information.

Mr F and Miss P told us they accepted my provisional decision. I've not seen any new information or further comments from EDL. The deadline for responding to my provisional decision has now passed.

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'd like to thank both parties for all the information that has been provided about this complaint.

As I've not seen any new information that changes my mind about this matter, I confirm the conclusions I reached in my provisional decision. I uphold Mr F and Miss P's complaint about their loan and EDL should put things right.

Putting things right

I think it is fair and reasonable for Mr F and Miss P to have repaid the principal amount that they borrowed, because they had the benefit of that lending. But they have paid interest and charges on lending that shouldn't have been provided to them.

EDL should:

- Remove all interest, fees and charges on the lending and treat all the payments Mr F and Miss P made as payments towards the capital.
- If reworking Mr F and Miss P's loan account results in them having effectively made payments above the original capital borrowed, then EDL should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled*.
- EDL should also refund to Mr F and Miss P any premiums paid for the 'Everyday Life Cover' with 8% simple interest. *
- Remove any adverse information recorded on Mr F and Miss P's credit file in relation to the loan.

*HM Revenue & Customs requires EDL to deduct tax from this interest. EDL should give Mr F and Miss P a certificate showing how much tax it's deducted, if they ask for one.

My final decision

My final decision is that I uphold this 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 F and Miss P to accept or reject my decision before 10 June 2021.

Sharon Parr
Ombudsman