DRN-3167145

The complaint

Mr M has complained that Everyday Lending Limited (EDL) lent to him irresponsibly.

What happened

Mr M was given a loan of £3,200 by EDL in January 2018. The loan was repayable in 36 monthly instalments of about £175. The total amount payable, including interest was just over £6,305. I understand the loan is still outstanding.

One of our adjudicators looked into the complaint and thought that EDL had been wrong to provide Mr M with the loan. EDL didn't agree with the adjudicator's assessment. As the complaint hasn't been settled, it has been passed to me to resolve the matter.

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 M's complaint.

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

- Did EDL complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loan in a sustainable way? If not, what would reasonable and proportionate checks have shown at the time?
- Ultimately, did EDL make a fair lending decision?
- 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 M irresponsibly. The lender was required to carry out a borrower focussed assessment or "affordability check" each time. The checks had to be "borrower" focussed – so EDL had to think about whether repaying the loans sustainably would cause difficulties or adverse consequences for Mr M.

EDL had to carry out reasonable and proportionate checks to satisfy itself that Mr M would be able repay his loans sustainably. There was no set list of checks that EDL had to do, but it could take into account a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

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).

There may also be other factors which could influence how detailed a proportionate check should've been for any particular application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether EDL did what it needed to before agreeing to lend to Mr M.

EDL asked Mr M for information about his income and it acquired a credit report and bank statements. EDL allowed around 35% of Mr M's monthly income for regular living expenses and it calculated his commitment to outstanding creditors. From what I've seen, I think the checks that EDL carried out before it agreed to lend to Mr M were reasonable and proportionate, in the circumstances.

However, I don't think that EDL made a fair lending decision on this occasion and I will explain why.

EDL says the loan was being used to consolidate some of Mr M's existing credit commitments and that by lending to him EDL would be putting Mr M in a much better position.

However, I think EDL focussed its calculation of whether the loan was affordable for Mr M on a pounds and pence basis. But as I've already explained, the lender was required to establish whether the borrower could *sustainably* meet the 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 difficulties and in particular 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.

EDL calculated that Mr M's average net monthly income was around £3,034. The one-month payslip that Mr M provided showed net income of around £2, 500 after all deductions. Mr M had a significant loan balance outstanding including a substantial HP commitment; he was very near his credit card limit and was regularly and substantially overdrawn. EDL says its loan would consolidate at least four high cost loans in full and enable Mr M to reduce and stop his overdraft with the disposable income it says would have been available to him each month, after taking into account his remaining credit commitments and his EDL loan repayments. EDL says it does not think Mr M was paying a substantial amount of his monthly income on credit repayments, especially considering he was 'young free and single with no dependants'.

But on balance, from the information gathered, I think EDL ought reasonably to have been aware that Mr M would most likely continue to struggle financially, despite the partial debt consolidation. I think EDL ought reasonably and fairly to have realised that Mr M would continue to pay a substantial amount of his monthly income on his credit commitments, and it was unlikely that he would have sufficient disposable income to make real inroads into his existing overdraft or other outstanding debt. Mr M was taking a substantial high cost loan, repayable over an extended three period. Overall, I think EDL ought reasonably to have realised that even with partial debt consolidation, its loan was likely to leave Mr M in an unsustainable position whereby he would most likely struggle to meet his loan repayments sustainably over the whole loan term without borrowing further. I think in these particular circumstances, EDL should reasonably have concluded that it was not appropriate to provide the loan to Mr M.

I haven't seen anything which makes me think that EDL acted unfairly or unreasonably towards Mr M in some other way. But on balance, I don't think EDL ought to have lent to him. So I am upholding this complaint and directing EDL to put things right.

Putting things right

I think it is fair and reasonable for Mr M to repay the principal amount that he borrowed, because he has had the benefit of that lending. But he has paid interest and charges on lending that shouldn't have been provided to him.

EDL should:

- Remove all interest, fees and charges on the loan and treat all the payments Mr M made as payments towards the capital.
- If reworking Mr M's loan account results in him 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*.
- If an outstanding balance remains, then EDL should try to agree an affordable repayment plan with Mr M.
- Remove any adverse information recorded on Mr M's credit file in relation to the loan.

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

My final decision

For the reasons given above, 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 M to accept or reject my decision before 24 April 2022.

Sharon Parr
Ombudsman