DRN-3195847

Financial Ombudsman Service

The complaint

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

What happened

Mr W was given two loans by EDL in 2018 and 2020.

Loan 1 in January 2018 was for £5,000 repayable in 36 monthly instalments of about £410. The total amount payable, including interest was just over £14,783.

Loan 2 in March 2020 was for £5,500 repayable in 36 monthly instalments of about £437. The total amount payable, including interest was just over £15,750.

One of our adjudicators looked into the complaint and thought that EDL had been wrong to provide Mr W with the loans. 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 W'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 W would be able to repay his loans 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 each time?
- 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 W 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 W.

EDL had to carry out reasonable and proportionate checks to satisfy itself that Mr W 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 W.

EDL asked Mr W for information about his income and it acquired a credit report and two months' bank statements. EDL allowed around 35% of Mr W'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 W each time were reasonable and proportionate, in the circumstances.

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

EDL calculated that the first loan was affordable for Mr W. However, I think EDL focussed its calculation of whether the loan was affordable for Mr W 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 was aware from its checks when Mr W applied for his first loan that he had significant loan balance outstanding including a substantial HP commitment. Mr W's credit checks also showed credit card defaults which Mr W apparently told EDL had occurred because he had been working overseas and had not been able to set up direct debit repayments. EDL's notes indicate that Mr W said he wanted to use his loan to settle debts which were by then with collection agencies. But from the information gathered, I think EDL ought reasonably to have realised that a more likely explanation for the defaults was that Mr W had been struggling financially to meet his repayments, despite the level of his income. EDL was also aware that Mr W had become a guarantor for a substantial loan on behalf of a family member – and therefore was at risk of having to meet these loan repayments (on top of his own existing creditors) if the Borrower was unable to repay the loan. Mr W was taking a substantial high cost loan from EDL, repayable over an extended period. On balance, given the information gathered, I think EDL ought reasonably to have realised that Mr W's financial position was already showing signs of strain and that a loan of this scale was likely to tip him over into an unsustainable position whereby he would most likely struggle to meet his loan repayments sustainably over the whole loan term. I don't think EDL ought reasonably to have provided the first loan to Mr W.

From what I've seen, Mr W's financial position had not improved substantially when he applied for his second loan with EDL. He appears to have defaulted on a utility account just prior to taking the second loan; his bank statements showed charges and fees for overdraft usage, at least one returned payment and his bank account remained in credit for only a short time after his salary was paid in before returning to an overdrawn status – despite the level of his salary. Overall, I think EDL ought reasonably to have realised that Mr W was most likely borrowing again to keep up with his financial commitments and that it was unlikely he would be able to repay the loan 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 second loan to Mr W.

I haven't seen anything which makes me think that EDL acted unfairly or unreasonably towards Mr W in some other way. But on balance, I don't think EDL ought to have lent to him on either occasion. 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 W 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 loans and treat all the payments Mr W made as payments towards the capital.
- If reworking Mr W'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*.
- Remove any adverse information recorded on Mr W's credit file in relation to the loans.

*HM Revenue & Customs requires EDL to deduct tax from this interest. EDL should give Mr W 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 W to accept or reject my decision before 12 March 2022.

Sharon Parr
Ombudsman