DRN-3212005

The complaint

Mrs M complains that Everyday Lending Limited trading as Everyday Loans (EDL) provided her with loans that she couldn't afford to repay.

What happened

Mrs M took out two loans with EDL, on the following basis:

Loan	Date	Amount borrowed	Term	APR	Monthly repayment	Total repayable
1	March 2019	£2,500	18 months	149.3%	£269.27	£4,846.86
2	September 2019	£5,000	36 months	106.8%	£356.35	£12,828.60

Mrs M is represented, but for ease I will refer to Mrs M only throughout.

Mrs M complained to EDL in July 2020. She said, in summary, that EDL had been irresponsible in lending to her and that it hadn't carried out thorough and appropriate checks before agreeing to lend. She said this had caused her financial difficulties and distress.

EDL didn't uphold the complaint. It said, in summary, that it considered the affordability checks it had carried out ahead of granting each loan to be reasonable and proportionate and it had calculated that Mrs M had sufficient disposable income to meet the repayments on both loans without undue difficulty.

Mrs M remained unhappy and referred her complaint to this Service.

An investigator here asked for some further information, including copies of bank statements in the lead up to each loan. They then reached an opinion, after they didn't receive the information requested.

They said, in summary, that for Loan 1 EDL hadn't carried out reasonable and proportionate checks, but that there wasn't enough information to conclude that the lending was unaffordable. For Loan 2, they thought that EDL ought to have realised from the checks it carried out, that Mrs M would be unlikely to be able to make the loan repayments on a sustainable basis. And that EDL should refund interest and charges plus 8% simple interest.

EDL disagreed with the outcome regarding Loan 2. It said, in summary, that the credit Mrs M had taken in the lead up to Loan 2 had all been taken into account in the affordability calculations. The purpose of Loan 2 was to "*tidy up her finances*" and this happened because after taking out the loan, Mrs M's financial commitments went down from £2,134.22 per month to £1,187.46 per month.

The investigator then issued another view, in relation to Loan 2. They said, in summary, that because we hadn't received copy bank statements from Mrs M, they couldn't be sure what reasonable and proportionate checks would've shown. And that, because of this, they didn't think EDL needed to do anything further.

Another investigator then issued another view. They thought the complaint should be upheld in full, because the information EDL gathered about Mrs M's income and expenditure before granting both of the loans, indicated that she didn't have enough disposable income to meet the repayments on either loan on a sustainable basis. For both loans, this was due to the income figures used by EDL in its affordability calculations being too high, based on the information it had gathered. As such, she recommended that EDL refund the interest and charges for both loans.

EDL disagreed with this latest view. It said, in summary, that if Mrs M's income was as stated by the investigator in the view, then it may have agreed with the outcome. However, it explained why it considered the income figure it had used for Loan One to be accurate. For Loan 2, it said that if it had calculated Mrs M's main income using an average figure from the Payslips it had (rather than use the higher figure it used which appears from its notes on file to have been calculated using Mrs M's 'year to date' pay), this would have slightly reduced the overall income figure. But that this still left Mrs M with enough disposable income to meet the loan repayments. It said that if the investigator still thought the case should be upheld, it wanted the case escalated to an ombudsman

The investigator still thought the complaint should be upheld, so it has been passed to me to decide.

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.

Having done so, I uphold this complaint in full, for largely the same reasons given by the last investigator. Before I explain why, I want to set out my role as an ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having read all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint, when doing that.

Given the dates of sale of the loans, the FCA CONC rules apply. In essence, EDL needed to carry out reasonable and proportionate checks to ensure that Mrs M could afford to make the repayments on both loans, in a sustainable manner. It also needed to make fair lending decisions based on the information it obtained.

<u>Loan One</u>

EDL has explained that it assessed Mrs M's ability to meet the loan repayments by carrying out an income and expenditure calculation. It calculated Mrs M's income using information that it received in the form of payslips and credits into her bank account.

For this loan, EDL calculated that Mrs M's income was £3,382.66 per month, broken down as £2,160.96 per month from her main income and £1,221.70 per month from her secondary income (which I note EDL has described as having been from a "*temp role*"). However, I think that the income figure EDL used in its affordability calculation was too high, based on the information it had.

First, in terms of Mrs M's main income, the two Payslips EDL provided as part of its file, show the following:

- January 2019 (£2,134.35)
- February 2019 (£2,119.83)

The checklist on file containing information relevant to the loan application indicates that where the income amounts over two months are similar, the average would be taken. This would give a figure of approximately £2,127, which is slightly lower than the figure EDL used in its calculation. It's not clear why EDL used a higher figure, though there is not much of a difference.

However, it is the figure that EDL used for Mrs M's second income that is significant. EDL's figure of £1,221.70 appears to have been derived from an average weekly income figure of £281.93 per week – this presumably being the average payment into her account in relation to this secondary job, that EDL calculated. However, the bank statements that Mrs M provided to EDL before it agreed to lend (covering approximately a nine week period), show that she only received a total of four payments from this secondary job. She received a total of £1,075.92 over this period. This equates to an average income of £119.54 per week – significantly lower than the figure EDL decided to use.

Given what the bank statements showed – that Mrs M wasn't receiving a secondary income every week, I don't think the basis upon which EDL assessed her secondary income was fair. I can't see from the file that EDL sought or received any kind of assurances from Mrs M as to the frequency and amount of future income from that secondary job.

Using the figure of £119.54 per week (equating to around £518 per month) and adding this to the £2,127 figure from Mrs M's main income, gives a total monthly income of approximately £2,645. EDL assessed Mrs M's expenditure as being £850 on rent, £902.31 on existing creditor repayments and £880 living expenses based on Office of National Statistics (ONS) averages. This leaves remaining disposable income of £12.69 per month – before the EDL monthly repayment amount is taken into account.

Given the extent of existing credit that Mrs M had at the point of applying for this loan, it is questionable whether it was reasonable and proportionate for EDL to use an ONS average figure for living expenses – rather than take a closer look at her actual expenditure. But even using this living expenses figure, had EDL assessed affordability with the lower income per my analysis, I think it would reasonably have concluded that Mrs M wouldn't be able to sustainably meet the loan repayments. As such, granting the loan represented irresponsible lending.

<u>Loan Two</u>

From what EDL has said, it assessed affordability for Loan Two in much the same way as it did for Loan One.

For this loan, EDL calculated that Mrs M's income was £3,812.86 per month, broken down as £2,710.40 per month from her main income and £1,102.46 per month from her secondary income (which appears to be from the same "*temp role*"). However, I think that in the same way as I found for Loan One, the income figure EDL used in its affordability calculation for Loan Two was again too high, based on the information it had.

EDL's notes from the time of sale indicate that the main income figure was derived from a recent pay slip and a 'year to date' calculation. With that said, it's not clear to me how it arrived at the figure of £2,710.40. In response to the last assessment, EDL noted that if it had used the average of the two most recent amounts of pay from Mrs M's main job (taken from the amounts coming into her bank account) before applying for this loan, this would have meant a figure of around £2,507. This would seem to me to have been a reasonable way to assess Mrs M's income – not least because it is based on the most recent amounts of pay, which would have been likely (as a start point and in the absence of any kind of further verification) to be most representative of her income going forwards.

I also again have concerns with the income figure EDL used for Mrs M's second income. The documents on file indicate that EDL assessed Mrs M's second income to be £1,102.46 per month. Once again, it's not entirely clear how it came to this figure. But regardless, Mrs M's bank statement information in the lead up to the loan, show that over an 8 week period in the lead up to applying for this loan, Mrs M received a total of £1,631.14, from six payments into her account. Once again, the statement information shows that Mrs M didn't receive a payment every week. Given this, I again don't think the basis upon which EDL assessed her secondary income was fair. I can't see from the file that EDL sought or received any kind of assurances from Mrs M as to the frequency and amount of future income from that secondary job.

The average weekly income from the second job equates to approximately £204 per week. This equates to approximately £884 per month – a figure significantly lower than the one used by EDL in its affordability assessment.

Adding this to the £2,507 figure from Mrs M's main income, gives a total monthly income of approximately £3,391 per month. EDL assessed Mrs M's expenditure as being £750 on rent, £1,187.43 on net existing creditor repayments (taking account of consolidation from the new loan) and £1,025 living expenses based on ONS averages. This leaves remaining disposable income of around £429 per month – before the EDL monthly repayment amount (£356) is taken into account.

Once again, given the extent of existing credit that Mrs M had at the point of applying for this loan, evidence of some Payday Loan usage in the lead up to the loan and that she was applying to borrow more money only six or so months after taking out Loan One, it is questionable whether it was reasonable and proportionate for EDL to use an ONS average figure for living expenses – rather than take a closer look at her actual expenditure. But even using this living expenses figure, had EDL assessed affordability with the lower income per my analysis, I think it would reasonably have concluded that Mrs M would be unlikely to be able to sustainably meet the loan repayments.

Although one arrives at a positive net disposable income figure, it is small and would have left very little 'wriggle room' for any kind of adverse change in circumstances. This is particularly taking account of the fact that around 45% of Mrs M total new monthly income would (factoring in the new loan repayment figure) be taken up by debt repayments. So I think the decision to grant Mrs M this loan was also irresponsible.

And given the difficulty Mrs M says the granting of both loans caused her (and I note her credit file shows substantial Payday Loan activity following Loan two), I think this means EDL needs to do something to put things right.

Putting things right

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they would be in now if the mistakes it made hadn't happened.

In this case, that would mean putting Mrs M in the position she would now be in if she hadn't been given the loans in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mrs M was given the loans and she had use of the money. And, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mrs M back in the position she would be in if she hadn't been given the loans in the first place. However, I don't think it appropriate for EDL to benefit from unfair lending decisions.

Bearing this in mind, EDL needs to do the following:

1. Refund all the interest, fees and charges Mrs M has paid to date.

2. Reduce any outstanding capital balance by the amount calculated at step 1.

3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. But if Step 2 leads to a positive balance, the amount in question should be given back to Mrs M and 8% simple interest should be added to the surplus†.

4. Remove any adverse information recorded on Mrs M's credit file as a result of the interest, fees and charges.

† HM Revenue & Customs requires the business to take off tax from this interest. The business must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

My final decision is that I uphold Mrs M's complaint against Everyday Lending Limited trading as Everyday Loans. I direct it to do what I've set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 July 2022.

Ben Brewer
Ombudsman