DRN-3213290

The complaint

Mr C is unhappy that Everyday Lending Limited trading as Everyday Loans (EDL), provided him with a loan that he couldn't afford to repay.

What happened

In June 2019, EDL provided Mr C with a loan for £2,500. The APR was 127.1%, the loan term 36 months, the total amount repayable £6,926.40 and the monthly repayment amount £192.40.

In November 2020, Mr C complained that EDL had been irresponsible in providing him with the loan, because he already had a significant number of Payday Loans. He said that this had resulted in him needing to enter a Debt Management Plan (DMP), with the EDL loan representing over half of the total amount that he owed.

EDL didn't uphold the complaint. It said that the loan was for the purpose of debt consolidation and that all of the Payday Loans had been considered in the affordability assessment.

It said that it had carried out checks on Mr C's income and expenditure and calculated that, after taking account of the debt consolidation, he had enough disposable income to meet the loan repayments.

Mr C remained unhappy and asked this Service to look into his complaint.

An investigator here issued a view upholding the complaint. She said, in summary, that:

- Under the relevant regulatory framework, EDL was obliged to lend responsibly. This meant that before agreeing to lend, EDL needed to check that Mr C would be able to sustainably meet the loan repayments.

- From the information EDL had gathered, there were signs that Mr C had experienced problems managing his money before approaching EDL for a loan. The credit report EDL had obtained before agreeing to lend, showed that Mr C had taken out 18 Payday Loans in the 12 months leading up to the loan application. There were also nine active short-term loans not visible on the credit report, that EDL had also identified.

- This suggested that Mr C was in a cycle of short-term loan usage and that he was relying on additional borrowing to repay existing debts.

- EDL's affordability assessment showed that even after the debt consolidation, Mr C would only have disposable income of £89.20 each month. Given that EDL's automated living expenses checks allocated less than the minimum average living allowance, this wouldn't give Mr C any leeway in the event that his circumstances changed.

- As such, the checks EDL carried out demonstrated that Mr C would be unlikely to be able to make the loan repayments on a sustainable basis.

- Because of this, EDL should refund all of the loan interest and charges (plus statutory interest) and remove any adverse information in relation to the loan from his credit file.

EDL disagreed. It said that the loan consolidated Mr C's existing Payday Loan debt and this meant that he was put in a better position and one that was affordable. It also said that it noted Mr C only had one loan with EDL, suggesting he wasn't in a cycle of debt.

Because the matter remained unresolved, the case 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. 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.

Under the relevant regulatory framework (the Consumer Credit Sourcebook – 'CONC'), EDL was obliged to lend responsibly. This meant that it had to reasonably assess whether Mr C could afford to meet the loan repayments in a sustainable way over the term of the loan in question.

CONC didn't specify what level of detail such an assessment might require – nor did it set out how such an assessment needed to be carried out in practice. Instead, it said that the necessary level of detail when carrying out a requisite assessment would depend on the relevant factors, such as the nature of the lending in question (e.g. size of loan, duration, total cost etc) as well as the applicant's circumstances.

CONC defines the notion of sustainably repaying debt as being able to meet the repayments of a credit agreement without undue difficulty. And that includes being able to make repayments on time and without taking on additional borrowing to do so while also meeting other reasonable commitments.

EDL says that it checked affordability by assessing Mr C's income and expenditure. For the former, it obtained recent payslips and a bank statement covering approximately one month. For the latter, it says that it used Office of National Statistics (ONS) data to accurately calculate Mr C's living costs. It also obtained a credit report.

EDL ought to have seen from the credit report and bank statement, that Mr C was in something of a cycle of relying on short-term loans.

EDL's contact notes suggest that it was aware of the Payday Loans appearing on Mr C's bank statement. However, it seems that it only considered them as far as its income and expenditure assessment was concerned. But Mr C's bank statement showed that in the month or so leading up to the EDL loan, he had 10 Payday loan payments coming into his account, totalling around £1,650. In the same time period, he made two payments to Payday Lenders, totalling around £223.

This indicates both a significant reliance on short term lending and also a fundamental issue in terms of income in relation to expenditure. This is against a backdrop of the credit file suggesting a heavy reliance by Mr C on short-term lending and of taking out borrowing to repay previous borrowing. His bank statement also showed him being significantly into his overdraft at the beginning and end of the approximately one month period.

It's questionable whether the expenditure assessment (relying on an ONS average figure) was itself reasonable and proportionate - given all relevant factors. But in any case, the information contained in the credit file and bank statement that I've mentioned all points towards Mr C struggling with his finances in such a way that EDL ought to have known that the loan was likely to be unsustainable.

Mr C's bank statement also shows other things that aren't currently explained in any detail, including what appears to be additional income (that is referenced in EDL's contact notes) and other substantial payments in and out. I don't find it necessary to find out more about these before reaching a decision, because none of these things are likely to materially affect the affordability of the loan. I'm satisfied that EDL ought to have concluded the loan would likely be unsustainable based on what it already knew.

I note that EDL has said its loan was for debt consolidation and that, as such, it put Mr C in a better position financially. There is a degree of logic to this statement, but it doesn't take account of the bigger picture that Mr C was unlikely to be able to sustainably meet the loan repayments.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business – 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 Mr C in the position he would now be in if he hadn't been granted the loan.

However, this isn't straightforward when the complaint is about unaffordable lending because it isn't always possible to undo what's already been done. And with that being the case here, I have to consider if there's another way of putting the matter right fairly and reasonably given the circumstances of this complaint.

So, here's what EDL needs to do:

1. Refund all the interest and charges Mr C has paid to date.
2. If the borrowing is still in place, 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. And agree an affordable repayment plan with Mr C or his representative. But, if Step 2 leads to a positive balance, the amount in question should be given back to Mr C and 8% simple interest should be added to the surplus†.
4. Remove any adverse information recorded on Mr C's credit file as a result of the interest and charges.

*HM Revenue & Customs may require the business to take off tax from this interest. If that's the case, the Business must provide a certificate showing how much tax it's taken off if one is requested.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 June 2022.

Ben Brewer
Ombudsman