DRN-3245702

The complaint

Ms P complains that Everyday Lending Limited trading as Everyday Loans (EDL) gave her loans that she couldn't afford to repay.

What happened

Ms P took out two loans with EDL, on the following basis:

Loan	Date	Amount borrowed	Term	APR	Monthly repayment	Total repayable
1	October 2018	£2,000.00	24 months	249.5%	£243.78	£5,850.72
2	June 2019	£4,338.98	18 months	199.6%	£522.97	£9,413.46

In November 2020, Ms P complained to EDL that it hadn't carried out sufficient affordability checks to ensure that she could meet the repayments on either loan. She said she already had existing high cost credit borrowing and that, as such, EDL ought to have carried out further enquiries before agreeing to lend. Ms P is represented in this complaint, but for ease I will refer to Ms P throughout.

EDL rejected the complaint. It said that it had carried out reasonable and proportionate affordability checks before granting each loan and that on both occasions it calculated Ms P had enough disposable income to meet the loan repayments.

Ms P referred her concerns to this Service. She said that the lending worsened her financial situation, which was already poor. Her comments indicated that the second loan in particular had caused her the most difficulty.

An investigator here asked Ms P to provide copies of bank statements in the three months leading up to each loan and one month after. Ms P provided statements in relation to Loan 2.

Another investigator issued an opinion on the case. They said, in summary, that for Loan 1, EDL ought to have realised based on what it knew of Ms P's circumstances that she would have been unlikely to be able to meet the loan repayments on a sustainable basis. This was because it appeared the loan was to be used to repay a defaulted credit card account and that the borrowing would increase her indebtedness at a time when she was already struggling with her finances. The investigator recommended that EDL repay all interest and charges paid by Ms P on the loan and remove any adverse information in relation to it.

For Loan 2, the investigator said they didn't think the checks carried out by EDL were reasonable and proportionate, but that Ms P hadn't provided the copy bank statements requested. And that, as such, they didn't have enough information to say that EDL needed to do anything further.

EDL disagreed in relation to Loan 1. It said that its notes indicated the loan was to be used to repay payday loans and that by agreeing to lend, it had actually reduced Ms P's outgoings.

At this point, the investigator asked Ms P to provide the rest of the statements that had originally been requested.

The investigator then issued another assessment. They said, in summary, that for Loan 1 the checks EDL had carried out hadn't been reasonable and proportionate given relevant factors, which included the nature of the borrowing and Ms P's circumstances. However, Ms P hadn't provided copy bank statements in relation to this loan and so they didn't have enough information to say that EDL needed to do anything further.

For Loan 2, the investigator said they thought EDL ought to have realised based on what it knew that it was increasing Ms P's indebtedness in an unhelpful way and that she would be unlikely to meet the loan repayments in a sustainable manner. The investigator said that EDL should refund the interest and charges paid by Ms P on this loan and remove any adverse information in relation to it.

EDL disagreed in relation to Loan 2. It said, in summary, that granting the loan hadn't increased Ms P's indebtedness in an unhelpful way. It said that Ms P would end up paying less interest overall.

The investigator's view didn't change and so the case was passed to me to decide.

I requested some further information from both parties. I asked Ms P:

1. how she had been able to keep up repayments on the first loan.
2. to clarify whether the second loan was used to repay the first.
3. whether the second loan consolidated all of her debts at that time; and
4. questions about two payees showing on bank statements before both loans.

Ms P replied with the following:

"In response to the questions asked; 1) I never missed a payment but the majority of my wages went on repaying debts, I took out various payday loans to try and subsidise my outgoings or I borrowed money off family. 2) The intention of the second loan was to try and consolidate some of my debt, the £2000 wasn't enough to pay off everything but I do manage to clear A few payday loans. I then found I was paying out even more than I was before I took the second loan out. I managed to pay the second loan off early because I borrowed money from my partner. 3) (in relation to the two payees showing on the bank statements) I have borrowed money off them to help me through the months…."

I asked EDL for a copy of any call recordings from the time of sale and a copy of the full account statements for both loans. EDL provided the statements but said it didn't hold a copy of any call recordings.

I then shared my provisional thoughts on the outcome of the case with both parties. I said:

"*For both loans, EDL had a responsibility to check that Ms P could afford to make the repayments on a sustainable basis i.e. without undue difficulty and without needing to resort to further borrowing. The checks it carried out needed to be reasonable and proportionate given relevant factors – such as the size and length of the loan as well as Ms P's circumstances.*

Loan 1

In terms of affordability checks, it appears that EDL did a number of things. It asked for details of her income (and checked this by asking for a bank statement showing the income). It sourced information about Ms P's credit commitments and worked out what this translated into in terms of monthly expenditure (factoring in credit that was to be repaid using the loan). It then did an income and expenditure calculation using this income and expenditure plus an additional expenditure figure – based on Office of National Statistics (ONS) data.

I'm inclined to agree with the investigator that this didn't represent reasonable and proportionate checks. I say this because the recent bank statement Ms P provided to EDL at the point of applying for the loan, showed that she had received £740 into her account from nine separate short-term loans and made four payments to short-term loan providers, totalling £970. This information that EDL had, indicated that Ms P had a strong reliance on short-term lending at the point of applying for the loan with EDL. Although this loan was intended to be used to repay the short-term loans, the extent of Ms P's apparent reliance on them immediately before applying for the EDL loan, means that EDL ought to have realised that using an ONS average figure for expenditure wouldn't represent a reasonable and proportionate check. I think it needed to take a closer look at Ms P's expenditure, to check that the loan repayments would be sustainable.

We have repeatedly asked Ms P to provide bank statements in the three months leading up to loan 1, to try to establish what reasonable and proportionate checks would likely have shown.

However, the only statements we have received are in relation to loan 2. Bearing this in mind and that Ms P has said she accepts the investigator's findings in relation to loan 1, I'm currently minded to say there is insufficient evidence to say that loan 1 was unaffordable.

Loan 2

It appears that EDL carried out very similar affordability checks before agreeing to lend. Once again, I don't think this represented reasonable and proportionate checks. I say this because the credit file that EDL obtained before agreeing to lend, indicated that Ms P had taken out further short term loans since taking out loan 1 with EDL. This ought to have indicated to EDL that Ms P was struggling to manage her finances.

In addition, Ms P was looking to significantly increase her borrowing with EDL, only eight months after taking out the first loan. In addition to this, the monthly repayment figure for this loan represented a significant proportion of Ms P's income. Taking all of these factors into account, I think EDL ought to have realised that it needed to take a closer look at Ms P's income and expenditure (in particular the latter), to satisfy itself that Ms P would be able to make the loan repayments on a sustainable basis.

As above, Ms P has provided bank statements for the three months leading up to applying for loan 2. These show Ms P taking out a significant number of short-term loans in the lead up to applying for loan 2. They also indicate a consistent deficit regarding the short term loans, in that Ms P was paying more each month on repayments than the amounts she was borrowing. The statements indicate that the 'gap' between these in and out figures, was bridged by payments in from the (name of relevant) accounts. Bearing in mind what Ms P has said about the nature of these payments into her account, I think this shows that she was struggling to manage her finances with her outgoings as they were. Given that the *new loan significantly increased her outgoings, this strongly indicates that she would be unlikely to be able to meet the repayments on loan 2 in a sustainable manner. And I think that had EDL carried out reasonable and proportionate checks, this is what it would most likely have found.*

Putting things right
With that being the case, I think something had gone wrong that needs to be put right. EDL should refund all interest, fees and charges on loan 2 plus 8% simple interest. It should also remove any adverse information from Ms P's credit file, in relation to the interest, fees and charges."

I asked for any further evidence or arguments to be provided by 29 June 2022. Ms P responded to say that she accepted my findings. EDL didn't provide a response.

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'm still minded to uphold this complaint in part.

Since Ms P accepted my findings and EDL didn't provide a response, I see no reason to depart from my provisional findings (which form part of this decision).

For both loans, EDL was required to carry out reasonable and proportionate checks to make sure that Ms P could afford to meet the loan repayments on a sustainable basis. Given the relevant factors (as set out in my provisional findings), I still don't think it did.

Loan 1

We repeatedly asked Ms P to provide bank statements in the three months leading up to Loan 1, to establish what reasonable and proportionate checks would likely have shown. However, we never received these. I still find there is insufficient evidence to show that this loan was unaffordable, so I don't require EDL to do anything further in relation to this.

Loan 2

In terms of getting a better understanding of Ms P's financial situation, in particular in relation to her income and outgoings, EDL could've done this in a number of ways. As EDL didn't take these steps, I can't know what the checks would've revealed. However, I've seen a copy of Ms P's bank statements in the lead up to the loan application.

In the absence of anything else from EDL showing what proportionate checks would have shown, I think it's fair, reasonable and proportionate to place considerable weight on this as an indication of what Ms P's financial circumstances were likely to have been. And what EDL would've likely uncovered if it had completed proportionate checks.

As set out in my provisional findings, the statements show Ms P taking out a significant number of short-term loans in the lead up to applying for this loan. They also show a number of payments into her account from other people. Taken together and given what Ms P has said about these payments into her account (which is perfectly plausible), I still think this shows she was struggling to manage her finances before taking out the second loan. Given that the monthly repayment on the new loan was significantly higher than the first, I still think this indicates that Ms P would be unlikely to be able to meet the loan repayments. And I still think that had EDL carried out reasonable and proportionate checks, this is what it would most likely have found.

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 Ms P in the position she would now be in if she hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Ms P was given the loan 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 Ms P back in the position she would be in if she hadn't been given the loan 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 refund all of the interest and charges on Loan 2 and add 8% simple interest from the date of payment to the date of settlement.

It also needs to remove any adverse information recorded on Ms P's credit file as a result of the interest 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 partly uphold Ms P's complaint against Everyday Lending Limited trading as Everyday Loans. I direct it to do what I've said above under 'Putting things right'.

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

Ben Brewer
Ombudsman