DRN-3351449

The complaint

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

What happened

Mr M was given a loan of £1,250 by EDL in April 2018. The loan was repayable in 24 monthly instalments of about £138. The total amount payable, including interest was just over £3,312. I understand Mr M experienced difficulties repaying the loan and the debt was sold to a third party.

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". The checks had to be "borrower" focussed – so EDL had to think about whether repaying the loan 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 loan 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 requested information about Mr M's income and it acquired a credit report and bank statements. EDL used ONS data to calculate Mr M's 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 and I will explain why.

EDL says the loan was being used to consolidate some of Mr M's existing pay day loan commitments and it thinks its loan was affordable for him.

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.

From what I've seen, EDL was aware from the information it had gathered that Mr M had been struggling financially for some time. Mr M had been borrowing from a number of high cost lenders with at least one substantial outstanding loan, several pay day loans, mail order and home lending accounts and an outstanding hire purchase agreement. Mr M also held several credit cards and had previously experienced problems repaying credit, with three active CCJs. EDL says that Mr M provided a reasonable explanation for the adverse information on his credit report and that as the last CCJ had been applied against Mr M over 14 months prior to his EDL loan application, this was not a reason not to lend. EDL says that after the partial debt consolidation Mr M would have had a debt to income ratio of around 39% which it thinks was 'not unreasonable'.

But I think EDL ought reasonably and fairly to have realised that the high percentage of Mr M's income that was going towards repayment of debt each month meant he was at significant risk of continuing to experience financial difficulty. Mr M was applying for a costly loan from EDL, repayable over an extended period. Given the level of his total remaining credit exposure, I think EDL ought reasonably to have realised that Mr M was borrowing to keep up with his financial commitments and even with partial debt consolidation, Mr M 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 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.

I understand the debt may have been sold to a third party. If this is the case, EDL should either buy the debt back if it is able to do so and then take the following steps. If EDL isn't able to buy the debt back then it should liaise with the new debt owner to achieve the results below.

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 26 April 2022.

Sharon Parr
Ombudsman