

complaint

Mr A has complained about the interest charged on a loan he was given by Everyday Lending Limited (EDL).

background

I issued a provisional decision about this complaint in November 2020 that I summarise below.

Mr A was given a loan of £10,000 by EDL in May 2017. The loan was due to be repaid with a monthly repayment of around £489 over a 48-month loan term. I understand the interest rate applied was 49.9% with an APR of 63.1%. The amount of interest payable on the loan was around £13,511 so Mr A had to repay in total around £23, 511.

Mr A says he wasn't told about the high interest rate when he took out the loan. He says he was told he would get a reduced rate of interest because of his good payment history and he thinks the interest that he's been paying is 'astronomically high'.

I explained that my decision deals only with Mr A's specific complaint about the level and amount of interest charged on this particular loan. As far as I understand, Mr A has not complained to EDL about irresponsible lending or the affordability of this loan or any of the other loans he's taken with EDL. So I said that I am not making any findings about whether or not EDL was right to provide Mr A with this loan or any other lending.

From what I'd seen from the customer records that EDL provided, Mr A took the loan for £10,000 in May 2017 (loan agreement ending 2893). Mr A says he wasn't told about the interest rate for his loan. EDL says it was 'common practice' during the application process for the advisor to highlight key aspects of the loan agreement, including the interest to be paid and the annual percentage rate (APR).

Mr A recalls being offered a 'reduced' interest rate due to his good payment history with EDL but he didn't think this preferential rate was applied. EDL says that during Mr A's application, a branch manager requested a reduced interest rate in recognition of Mr A's 'good payment history and custom'. But it hasn't confirmed if a reduced rate was applied.

There is limited information about what actually did happen when Mr A applied for his £10,000 loan but given that this loan was apparently being used to consolidate existing lending, I thought it's likely there was some discussion between Mr A and EDL when the loan was arranged. From what both parties had told us, I thought it's likely that Mr A was given the impression by EDL that a 'reduced' or preferential rate of interest would be applied to his loan.

EDL has provided further information about Mr A's borrowing history which I understand to be as follows:

Agreement ending	Amount	Date	Interest rate	APR
4988	£2,560	27/03/2015	56.90%	74.40%
7735	£6,000	18/11/2015	43.90%	53.90%
8638	£8,575	31/08/2016	46.90%	58.40%

2893	£10,000	23/05/2017	49.90%	63.10%
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It seemed to me that, rather than being given a 'preferential' or 'reduced' rate of interest for his £10,000 loan (ending 2893), Mr A was in fact paying a higher rate of interest and higher APR than his previous two loans with EDL.

The loan application documents set out the interest rate and APR. So I thought it's likely that Mr A was given information about the interest rate. But I didn't think it would be reasonable for EDL to expect Mr A to recall the interest rates and APR from his previous lending over a long period – I thought it's likely that Mr A reasonably relied on what EDL told him about the interest rate and that he was given the impression that the rate offered was preferential or reduced in some way - compared to his previous loans.

Taking everything into account, I thought that EDL misrepresented Mr A's £10,000 loan as having a 'reduced' or preferential interest rate. I thought section 56 of the Consumer Credit Act 1974 applies here - as Mr A says he's been misled about a credit agreement covered by this provision and he's complaining about something that happened before he took the credit.

I considered whether or not Mr A would still have taken the £10,000 loan, if he had realised that the rate of interest applied to the loan was not 'preferential' or 'reduced' as EDL had suggested.

EDL's records appear to show that Mr A was consolidating his previous lending and that £8,289 of the loan was used to settle his previous loan with EDL, with £1,710 provided to Mr A in cash. I thought it's likely that Mr A was under the impression that re-financing his previous loan in this way, with further lending at a reduced rate of interest, would help to repay his existing debt more cost effectively and help his financial position overall. I thought it's reasonable to say, in the circumstances, that had Mr A realised that not only was he not being given a reduced rate of interest, but the lending was in fact more costly than his previous two loans, then it's likely he would have declined to take the £10,000 loan from EDL.

Taking everything into account, I thought EDL treated Mr A unfairly because it misrepresented how 'preferential' the rate of interest was when it agreed the £10,000 loan in May 2017. It was EDL's responsibility to give Mr A clear, fair and not misleading information when it agreed to provide the loan to him. I think EDL failed to do this and instead gave Mr A the impression that the interest rate he was being charged for his loan was 'reduced' or preferential in some way. Whereas in fact it was higher than had been applied to his two previous loans. So I said I intended to uphold this complaint and that EDL should put things right for Mr A.

I invited both parties to send me any further comments or evidence. After hearing the outcome by telephone, Mr A says he is happy with my provisional decision. EDL has confirmed that it has received my provisional decision but it hasn't provided any further comment. The deadline for further evidence or comment in response to my provisional decision has now passed.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd like to thank both parties for all the information that has been provided about this matter and for responding to my provisional decision.

As I haven't seen any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

I uphold this complaint and EDL should put things right for Mr A.

Putting things right

I'm satisfied that EDL acted unfairly when it misrepresented the rate of interest on the loan it gave to Mr A in May 2017. I think it's likely Mr A wouldn't have taken the loan, if a misrepresentation hadn't taken place.

So as Mr A is now being expected by EDF to make repayments on a loan he wouldn't have taken, had he not been treated unfairly by EDL, I think he stands to lose out because EDL did something wrong. Where I find that a business has done something wrong, I'd normally expect that business - in so far as is reasonably practicable - to put the consumer back in the position they would be in now if that wrong hadn't taken place.

I've considered what would be fair and reasonable for EDL to do now, in the circumstances of this complaint. I think it's fair and reasonable for Mr A to repay the capital sum he borrowed from EDL as he's had the benefit of that lending. But I don't think he should be charged interest, fees or any other charges in relation to that loan. So to put things right, EDL should:

- Remove all interest, fees and charges from the loan taken in May 2017 for £10,000 and treat all the payments Mr A has made as payments towards the capital.
- If reworking Mr A's loan account results in his 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 reworking the account leaves an amount of capital still to be paid, then EDL should agree an affordable repayment plan with Mr A, bearing in mind its obligation to treat him positively and sympathetically in these discussions.
- Remove any adverse information recorded on Mr A's credit file in relation to the loan, once any outstanding capital has been repaid.

*HM Revenue & Customs requires EDL to deduct tax from this interest. EDL should give Mr A a certificate showing how much tax it's deducted, if he asks for one

my final decision

For the reasons given above, I uphold this complaint and direct Everyday Lending Limited trading as Everyday Loans to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 January 2021.

Sharon Parr
ombudsman