

complaint

Mr C has complained about loans granted to him by Everyday Lending Limited (“EDL”). He says that EDL was irresponsible when it agreed to lend to him.

background

EDL agreed two loans for Mr C: a loan of £1,800 in May 2011 and a second of £3,000 in December 2011. Most of the second loan was used to repay the first. Some of the information EDL provided is shown in the table below (all figures rounded to the nearest pound).

Loan	Start date	End date	Principal	Monthly repayments	Term (months)
1	31/05/2011	02/12/2011	£1,800	£158	24
2	02/12/2011	13/08/2013	£3,000	£230	36

Our adjudicator assessed the complaint and found that EDL should have seen from the information it had gathered each time Mr C applied for a loan that he wasn't likely to be able to repay his loans sustainably. She explained that Mr C was relying on his overdraft and was spending considerable sums on gambling. She recommended that EDL refund the interest and charges Mr C paid on both loans, along with 8% simple interest per annum.

EDL didn't agree with this recommendation and said that it wasn't fair to consider Mr C's gambling transactions because the information it had didn't show these and it wasn't required to review several months bank statements before lending. EDL asked for the complaint to come to an ombudsman to review and resolve.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having done so, I plan to uphold Mr C's complaint in full. I appreciate this will be very disappointing for EDL and I hope my explanation below makes it clear why I have come to this conclusion.

The Office of Fair Trading (OFT) was the regulator when Mr C borrowed from EDL. The relevant rules and guidance set out by the OFT in its Irresponsible Lending Guidance (ILG) said that for all loans EDL needed to check that Mr C could afford to meet his repayments in a sustainable manner. This meant Mr C being able to meet his repayments out of his normal income without having to go without or borrow further.

The regulations weren't prescriptive about what checks EDL needed to carry out in order to reasonably assess whether or not Mr C would be able to meet his repayments sustainably. But the regulations said that such checks needed to be proportionate. This suggests that the same checks might not be the appropriate thing to do for all consumers, or for the same consumer in all circumstances. I've highlighted some of the relevant guidance below for ease.

ILG Paragraph 4.2 stated:

*Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. **In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.***

Paragraph 4.3 stated:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – **in particular without incurring or increasing problem indebtedness***
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

And Paragraph 4.4 described "undue difficulty":

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- ***without having to borrow further to meet these repayments.***

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person'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 borrower is required to make payments for an extended period).
- the *greater* the number and frequency of loans, and the longer the period of time during which a person has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Mr C's case, I have considered the following questions:

- Did EDL complete reasonable and proportionate checks when assessing Mr C's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did EDL make fair lending decisions?

- Was there a point at which the pattern or history of lending itself showed further borrowing would be unsustainable for Mr C?

EDL says it gathered information from Mr C about his income and rent. It calculated an amount for his general living expenses and checked his credit file. I've summarised some of the information EDL says it used in its affordability assessment in the table below (with numbers rounded).

	Loan 1	Loan 2
Income	£2,200	£2,200
Rent	£200	£200
Creditor repayments	£81	£208
Calculated living expenses	£770	£770
Monthly cost of EDL loan	£158	£230
Calculated remaining income	£992	£792

EDL says that its assessments showed that for each loan the monthly repayments would be affordable for Mr C, leaving him with several hundred pounds a month to spare. The customer notes show EDL verified some of this information, for example it verified Mr C's income via a payslip and his employment status with his current employer. It also checked some of his bank statements and found he had an overdraft of over £2,000 and was managing several credit cards.

It seems on the face of it that EDL's checks were thorough. However, as I explain below, I think the information it gathered should have raised concerns and prompted further checks each time Mr C applied for a loan.

Loan 1

EDL's customer notes state that it saw Mr C's current bank account statements (covering April and the first week in May 2011) before agreeing to his first loan. These statements show that Mr C's income in April doesn't take his account into credit, and that he paid both arranged and unarranged overdraft fees for the previous month.

The bank statements also show that Mr C took out a short term loan in early May. EDL's customer notes from the time state that this short term loan was for car repairs. I note that Mr C had exceeded his overdraft limit (of £2,200) a few days prior to taking out the short term loan and that his salary wasn't due for about another two weeks. I've also noted that EDL had calculated Mr C's living expenses as £770, but his bank statements show almost £2,000 of spending, £1,500 though cash withdrawals. So it doesn't seem to me that the information EDL had supported its estimation of Mr C's monthly disposable income.

I think EDL ought to have been concerned about Mr C's ability to repay this loan out of his usual means, without borrowing, as he wasn't managing to do so with his existing debt. It's clear that his finances were already pressured and he was now asking for a loan to cover the cost of a holiday. Arguably, EDL didn't treat Mr C fairly when it agreed to lend to him based on this information because it was likely that agreeing more credit for him would simply add

to his debt levels. At the least, I think it would have been reasonable and proportionate for EDL to have looked into Mr C's spending in more detail before doing so.

As mentioned, EDL know that Mr C was reliant on his overdraft. Had EDL looked into Mr C's finances in more depth, I think it was likely to have found out that this wasn't a recent situation - his monthly income hadn't been enough to take him out of his overdraft at all that year and he paid both arranged and unarranged overdraft fees each month. I also think verifying some of Mr C's expenses was likely to have revealed that he had outstanding loans from at least three different short term lenders. This seems to me to confirm that Mr C wasn't managing to repay his existing debts sustainably and furthermore, that he needed to borrow each month to support his spending. And, armed with this knowledge, I think EDL would have declined to lend to him on this occasion.

Loan 2

EDL agreed another loan for Mr C in December 2011. This was for £3,000, some of which was used to repay his first loan and I understand the remainder was to cover Christmas expenses. Again, EDL checked some of Mr C's bank statements, which show planned and unplanned overdraft fees from the previous month. His salary does take him into credit but his account was depleted the following day and he was still using his overdraft to the same extent. Mr C's credit card debts remained, and he took out a short term loan the week before he was paid.

EDL's customer notes show that Mr C struggled to meet his repayments for his first loan, for example, he cancelled his direct debit in October as he didn't have sufficient funds in his account and a cheque was returned in November for the same reason.

I think EDL could see that Mr C's financial situation hadn't improved since his first loan. He hadn't managed to make inroads into his existing debts and had difficulty meeting his repayments for his first loan. Agreeing another loan for Mr C under these circumstances simply prolonged his indebtedness, potentially for another three years. So I don't think EDL treated him fairly when it did so.

And, as with Mr C's first loan, I don't think the information EDL had supported its estimate of his disposable income. Had EDL looked into Mr C's spending in more detail, I think it's likely it would have seen that he was still relying on his overdraft and on short term credit each month – he had outstanding loans from at least three short term providers when he borrowed a second time.

As our adjudicator explained, it seems Mr C spent significant amounts on gambling. Potentially, EDL would have uncovered this spending pattern had it carried out further checks – there were some gambling transactions on the statements it had. However, leaving this aside, as I've explained, I think EDL treated Mr C unfairly when it agreed a second loan for him, and it's not likely further checks would have provided any reassurance to the contrary.

Mr C didn't manage to repay his second loan as agreed – he cancelled his direct debit before the first payment and thereafter made irregular payments by card before entering into an arrangement to pay weekly in early March 2013.

what EDL should do to put things right

I've concluded that EDL was irresponsible to have agreed to lend to Mr C. So he shouldn't have to pay any interest, fees or charges associated with either loan.

To put things right for Mr C, EDL should:

- a) refund all interest, fees and charges that he paid on both loans; and
- b) add 8% simple interest to these payments from the date they were made to the date the complaint is settled; and
- c) remove any adverse information from Mr C's credit file in relation to the loans.

* HM Revenue & Customs requires EDL to take off tax from this interest. EDL must give Mr C a certificate showing how much tax it's taken off if he asks for one.

my final decision

I uphold Mr C's complaint and direct Everyday Lending Limited to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 October 2020.

Michelle Boundy
ombudsman