complaint

Miss D has complained that Everyday Lending Limited (EDL) lent to her irresponsibly.

background

Miss D was given a loan of £6,000 by EDL in June 2018. The loan was due to be repaid in 48 monthly instalments of about £320. The total amount payable, including interest was just over £15,373. I understand the loan is outstanding.

One of our adjudicators looked into the complaint. He didn't think EDL should have provided Miss D with the loan and he asked EDL to put things right. 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.

my findings

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 Miss D'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 Miss D would be able to repay the 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 Miss D 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 Miss D.

EDL had to carry out reasonable and proportionate checks to satisfy itself that Miss D would be able repay her loan sustainably. There was no set list of checks that EDL had to do, but it could consider 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).

EDL was required to establish whether Miss D could sustainably repay her loan – not just whether the loan payments were affordable on a strict pounds and pence calculation. Of course, 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 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.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss D's complaint.

EDL asked Miss D for information about her income and expenditure. EDL also acquired a credit report and reviewed bank statements from Miss D. EDL allowed around 35% of Miss D's monthly income for regular living expenses and it calculated her monthly payments to outstanding creditors. From what I've seen, I think the checks that EDL carried out before it agreed to lend to Miss D were reasonable and proportionate, in the circumstances.

However, I don't think that EDL made a fair lending decision on this occasion.

EDL was aware from its checks that Miss D had around £12,374 of debt from at least 5 credit cards and two loans. Miss D told EDL that she wanted to consolidate some of her debts, to try and clear as much as possible.

EDL calculated that Miss D had to make monthly repayments to her existing creditors of just over £491. By applying her EDL loan to consolidate some of her debt, EDL calculated that Miss D monthly repayments to her existing creditors would be reduced to around £357.

But Miss D would then also have to pay £320 per month for her EDL loan. So, the amount she would pay to her creditors overall each month would rise from £491 to £677 per month – an increase of around £186 each month for the next 48 months.

EDL says that Miss D was previously only making minimum payments to her credit cards. It says that by taking the loan, EDL enabled Miss D to start reducing her debts over a period of time rather than indefinitely.

But I think EDL would have been aware that even after consolidating some of her debts, Miss D's existing debt would still be around £8,300. And she would also have to repay her loan from EDL in the next four years.

I think EDL ought reasonably to have been aware that taking further, costly lending was unlikely to help Miss D make sufficient inroads into her overall existing debt position - and in fact it potentially increased her indebtedness over the longer term. I think EDL ought to have realised that it was unlikely that Miss D would be able to sustainably repay her loan over the extended loan term. And so, it should have declined to lend to her.

I also note that after paying her regular expenses, her existing creditors and her EDL loan repayments, EDL calculated that Miss D would be left with just under £42 per month as disposable income. I think EDL ought to have realised this would most likely not have been sufficient to enable Miss D to meet unexpected emergencies over the next four years.

Overall, I think EDL ought fairly to have realised that Miss D was most likely going find it very difficult to manage her financial position and that it was unlikely that she would be able to sustainably repay her loan over the extended loan term. I think in these circumstances, EDL should reasonably have concluded that it was not appropriate to lend to Miss D.

So, I am upholding Miss D's complaint that she should not have been given the loan.

I haven't seen anything which makes me think that EDL acted unfairly or unreasonably towards Miss D in some other way. But taking everything into account, I don't think EDL should have agreed to provide the loan to Miss D. So EDL needs to put things right.

Putting things right

I think it is fair and reasonable for Miss D to repay the principal amount that she borrowed, because she had the benefit of that lending. But she has had to pay interest and charges on a loan that shouldn't have been provided to her.

If the loan is still outstanding, EDL should try to agree an affordable repayment arrangement with Miss D - bearing in mind the need to treat her positively and sympathetically in those discussions.

If EDL has sold the outstanding debt it should buy it back, if it's 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 outlined below.

EDL should:

- Remove all interest, fees and charges on the loan and treat all the payments Miss D made as payments towards the capital.
- If reworking Miss D's loan account results in her 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 Miss D.
- Remove any adverse information recorded on Miss D's credit file in relation to the loan.

*HM Revenue & Customs requires EDL to deduct tax from this interest. EDL should give Miss D a certificate showing how much tax it's deducted, if she 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 Miss D to accept or reject my decision before 9 March 2021.

Sharon Parr
Ombudsman