DRN-4372493

The complaint

Mr S complains that Everyday Lending Limited trading as Everyday Loans ("EDL") irresponsibly agreed a loan for him.

Mr S has brought his complaint to us via a representative but I will refer to him throughout for simplicity.

What happened

EDL agreed a loan of £10,600 for Mr S in May 2022. The total amount owed was £21,390 to be repaid at £356 a month over 60 months (figures rounded).

Mr S complained to EDL that it didn't carry our adequate checks before lending to him and it should have seen that the loan was unaffordable. Mr S said he struggled to meet his repayments and had to borrow to do so.

EDL didn't uphold Mr S's complaint. It said that it carried out a reasonable and proportionate affordability check before lending to him and found that the loan repayments would be sustainable over the term as he had sufficient disposable income to meet them.

Mr S referred his complaint to us. One of our investigators looked into the complaint and recommended that it be upheld. They concluded that EDL didn't act responsibly by lending to Mr S at a time when he was having difficulty managing his finances.

EDL didn't agree with this recommendation and asked for the complaint to come to an ombudsman to review and resolve.

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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as EDL, need to abide by. EDL will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, EDL needed to check that Mr S could afford to meet his repayments out of his usual means for the term of the loan, without having to borrow further and without experiencing financial difficulty or other adverse consequences.
The checks needed to be proportionate to the nature of the credit (the amount borrowed, for example) and take into consideration Mr S's circumstances. EDL needed to pay proper regard to the outcome of its checks in respect of affordability risk. Ultimately, EDL needed to treat Mr S fairly and take full account of his interests when making its lending decision.

The questions I've considered are whether or not EDL carried out a proportionate affordability check before lending to Mr S? If not, what would a proportionate check have shown? Did the checks EDL carried out show anything of concern and ultimately, did EDL treat Mr S fairly and with due regard to his interests when it offered him the loan?

EDL provided the information it relied on when assessing Mr S's application which included its income and expenditure records, information from his credit file, bank statements for his current account for the period covering 26 March to 26 May 2022, his payslip for March and proofs of the debts he wished to consolidate with this loan. EDL said it found no indication from Mr S's credit file or bank statements that he was having difficulty with his finances. It also provided its customer notes, which set out its considerations of some of the figures used in its assessment and the discussions it had with Mr S about these.

I think it's fair to say that EDL gathered sufficient information to carry out a reasonable affordability assessment and discussed the purpose of the loan in detail with Mr S. I've reviewed everything to consider whether EDL made a fair lending decision on this occasion.

Mr S was earning just over £3,000 net a month as shown on his payslip and his bank statements. Mr S said he was living with his parents and paying £100 towards his board. EDL estimated Mr S's living expenses as £1,174 using national statistical datasets. It estimated that he spent around £1,678 on average repaying debt each month based on information from his credit file. This included his current hire purchase (HP) agreement, four loans, eight credit cards and one mail order account. So Mr S's usual monthly expenses came to around £2,950. It was obvious that he was living beyond his means and EDL noted that Mr S said he'd relied on credit due to personal circumstances which had now been resolved.

The loan was to fully repay a loan and a credit card balance and pay the car deposit of £4,500 for Mr S's next hire purchase agreement. It seems this would save Mr S over £1,000 a month as he no longer had the cost of these debts or his existing HP agreement but would instead have the cost of the new HP agreement plus this new loan. Going forwards Mr S would need to spend around £1,473 a month repaying his debt. Using EDL's figures for Mr S's board and expenses, Mr S would spend around £2,750 a month, leaving him with £250 spare (or as EDL estimated around £180 including a buffer).

I've gone through the bank statements EDL used and estimate that Mr S's monthly expenditure was slightly higher than the figure it relied on, excluding some obvious child-related costs and other usual costs Mr S was likely to have such as car insurance or tax, or clothing costs for example. I think EDL should have been concerned here that it wasn't leaving Mr S with sufficient money each month to cover his expenses, given he had a dependent.

EDL said that Mr S would save additional money as he planned to hire a smaller car and his fuel costs would reduce from £400 to £200 a month. EDL also noted that Mr S said his child maintenance payments would likely reduce by £100 in the near future because his child was going to spend more time living with him and that some of the child-related costs shown in his bank statements were one-off costs to pay for presents. I'm not sure EDL could rely on either of these savings amounts as they weren't yet evidenced, and it doesn't seem likely to me that Mr S's child-related spending would go down in absolute terms.

I also think that EDL should have been concerned that despite its loan being used to consolidate some of Mr S's debts, it still left him in the position of spending half his income on debt. I have borne in mind CONC 5.2A.25G which states that potential indicators that the level of affordability risk arising out the agreement may be high include circumstances where:

- the total value of the customer's outstanding debts relative to the customer's income is high; or

  - there is a high likelihood that the customer will not make repayments under the agreement by their due dates…it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

I think both of these indicators were present here. Agreeing this loan for Mr S brought his existing debts to at least £37,000, excluding his new car finance agreement, which is a sizeable amount relative to his salary. I also think there was a high risk in this case that Mr S wasn't going to be able to meet his repayments for this loan for the five years of the loan term while meeting his other debt repayments and his usual living costs. There was little slack in Mr S's budget because he was spending half his income meeting his debt repayments each month.

Mr S made his first three payments before contacting EDL in September 2022 to say he was in financial difficulty. He said he'd entered into a debt management plan and EDL accepted a reduced monthly payment. I think it was foreseeable that Mr S wouldn't be able to sustain his loan repayments. Mr S paid a lower amount for several months until March 2023. I understand Mr S had health worries and was between jobs for a time, and didn't resume his payments. I can see from a recent copy of his credit file that Mr S defaulted on at least 16 accounts in 2022 and 2023.

Altogether, I don't think EDL treated Mr S fairly and with due regard to his interests when it entered into the agreement and so I am upholding his complaint.

Putting things right

I think it's fair that Mr S repays the capital amount he borrowed as he's had the use of the money but I don't think it's fair that he pays any interest, fees or premiums associated with the loan.

To put things right for Mr S, EDL should:

- Cap the amount he needs to repay at the capital amount he borrowed, this being £10,600;
- Consider all payments he's made as payments towards this capital amount; and
  - If Mr S has repaid more than the capital he borrowed, which I don't think is the case here, then EDL should refund these overpayments to him along with 8% simple interest per annum**; or
  - If he hasn't yet repaid the capital then EDL needs to treat Mr S fairly and with forbearance which may mean agreeing an affordable repayment plan with him.
- Remove any adverse information about this loan from Mr S's credit file once settled.

If EDL has sold the debt it either needs to buy it back or work with the current debt owner to bring about the above steps.

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

My final decision

For the reasons I've explained I'm upholding Mr S's complaint about Everyday Lending Limited trading as Everyday Loans and it needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 26 February 2024.

Michelle Boundy
Ombudsman