

The complaint

Miss R has complained about loans granted to her by Everyday Lending Limited (“EDL”). She says that the loans were unaffordable for her and EDL was wrong to have agreed to them.

What happened

EDL agreed two loans for Miss R: a loan of £6,000 in July 2018; a second of £7,500 in June 2019. The second loan was used to repay the balance on the first leaving an amount of £2,136 which was paid directly to Miss R. Some of the information EDL provided is shown in the table below, with all figures rounded to the nearest pound for simplicity.

Loan	Start date	End date	Principal	Monthly repayments	Term (months)	Total payable
1	19/07/2018	03/06/2019	£6,000	£331	30	£9,924
2	03/06/2019	-	£7,500	£382	48	£18,343

Miss R says that she was borrowing from other lenders at the same time, including high cost short term lenders, and couldn’t afford the high repayments for these loans.

Our adjudicator assessed the complaint and found that EDL should have seen that Miss R wasn’t likely to be able to repay her second loan sustainably. Its affordability checks showed that her debt had increased considerably since her first loan and agreeing a second loan meant she would have too little left over each month to be able to meet her loan repayments sustainably.

EDL didn’t agree that it had been irresponsible when it agreed to a second loan for Miss R 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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having done so, I’m upholding Miss R’s in part as I’ve found that EDL was irresponsible to agree a second loan for her. I appreciate this will be disappointing for EDL and to some extent for Miss R also. I hope my explanation below makes it clear why I have come to this conclusion.

The Financial Conduct Authority (FCA) was the regulator when EDL lent to Miss R. Its rules and guidance obliged EDL to lend responsibly. As set out in its Consumer Credit Sourcebook (CONC), this meant that EDL needed to take reasonable and proportionate

steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.3.1G¹ stated that

1. *In making the creditworthiness assessment or the assessment required ..., a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required ... should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments or without having to realise security or assets (CONC 5.3.1G - 6¹).

Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

As set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. In other words the assessment needs to be borrower-focussed. It is not an assessment of the risk to the lender of recouping its money, but of the risk to the borrower of incurring financial difficulties or experiencing significant adverse consequences as a result of the decision to lend.

It is important to note here that the FCA didn't, and doesn't, specify exactly how the assessment is to be carried out but the "*extent and scope*" and the "*types and sources of information to use*" needed to be enough to be able to reasonably assess the sustainability of the arrangement for the borrower.

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).

¹ This was set out in CONC section 5.2A.12R in a revision to the text in November 2018

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

- did EDL complete reasonable and proportionate checks when assessing Miss R's loan applications to satisfy itself that she 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?
- did EDL act unfairly or unreasonably in some other way?

EDL says it gathered information from Miss R about her income and rent. It estimated an amount for her general living expenses, based on a percentage of her income, and checked her credit file. The customer notes show EDL verified some of this information, for example it verified Miss R's rent and monthly income from her bank statements and her payslip.

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	£2,067	£2,273
Rent	£695	£695
Creditor repayments	£144	£631
Estimated living expenses	£752	£796
Minus consolidated debt payment	-£61	-£298
Monthly cost of EDL loan	£331	£382
Estimated remaining income	£206	£68

EDL says that its assessment showed that for all loans the monthly repayments would be affordable for Miss R, leaving her with money to spare.

Our adjudicator found that EDL needed to go further in its checks and clarify Miss R's expenses, given the amount Miss R was borrowing and that she would need to meet her repayments for at least a year.

I think it would have been reasonable and proportionate in these circumstances for EDL to have looked into Miss R's spending in more detail. EDL looked at some of Miss R's bank statements but I don't know to what extent it used these to explore or verify her spending. That said, the spend I can see on the bank statements provided by EDL isn't at odds with its estimated figures and so I don't think further probing would have led it to decline to lend to Miss R the first time.

Miss R says EDL shouldn't have agreed to lend to her because of her existing debt levels. The creditor payments shown on the above table for loan 1 don't include all of her debt – she also had two high cost short term loans and was repaying a credit card via a debt management company. However, it seems Miss R was going to use the loan to consolidate her debts and I can see from the information provided by EDL that it checked the outstanding balances on her short term loans. So while EDL knew about her existing debts, its loan was ostensibly to repay most of them.

Taking everything into account, I can't say that EDL was irresponsible to have agreed this loan for Miss R.

Miss R's second loan was also to consolidate debts, including her first EDL loan. However, I don't think EDL treated Miss R fairly when it agreed to lend to her again. By this point, just a year later, Miss R's debts had increased significantly from about £6,500 to £8,000 (excluding her first EDL loan of £6,000). She still owed over £2,000 on a credit card and over £2,500 on a short term loan, so she either didn't consolidate these with her first EDL loan or had re-borrowed. And she had loans from two different short term lenders and several new running credit accounts, some high cost.

Altogether, it's clear Miss R's financial situation wasn't improving and her indebtedness had increased. It doesn't seem to me that she'd managed to free herself of a need for credit and granting a second loan simply prolonged her indebtedness, potentially for another four years.

Furthermore, EDL's affordability assessment for Miss R's second loan left her with £68 a month to meet any unexpected or seasonal costs. I note that its estimated spend doesn't seem to have considered that she had two dependents. In her circumstances, leaving her with this margin each month meant it was highly likely she would have difficulty meeting her loan repayments without borrowing further. And so EDL was irresponsible to have agreed to lend to her again.

Miss R didn't manage to repay her second loan as agreed. She explained to EDL the month after taking it that her car was not roadworthy and she could not afford to repair or replace it without rescheduling the loan. I understand that a repayment plan was agreed.

Miss R says that she is in serious debt as *"the result of a downward spiral from lending increasing, high interest rates and limits being increased even though my borrowing is already high"*. She has also explained that her debts have had a serious impact on her wellbeing.

I don't doubt that Miss R has had a very difficult time of it and I'm sorry to hear of this. I have considered whether any compensation should be awarded to her because of the impact of EDL's lending decisions on her circumstances. I've borne in mind that Miss R's debts were established before EDL agreed to lend to her and it was not her only credit provider. I think this Service's usual approach to redressing irresponsible lending decisions is the most appropriate way to put things right in this case and I've set this out in detail below.

Putting things right

I've concluded that EDL was irresponsible to have agreed to lend to Miss R a second time. Where we find a loan to have been agreed irresponsibly, this Service's approach to putting things right is to refund any interest and charges paid by the borrower above the capital amount borrowed. In addition, we usually direct the lender to pay a refund of 8% per annum simple interest on these payments where the borrower was unfairly deprived of their money. We'd expect the borrower to repay the capital borrowed as they have had the use of these funds.

In line with this Service's approach, Miss R shouldn't repay more than the capital amount of £7,500 she borrowed for her loan agreed in 2019.

To put things right for Miss R, EDL should:

- a) remove any interest, fees and charges that make up the current loan balance; and
- b) treat all payments made by Miss R as payments towards the capital amount; and
- c) treat her fairly and sympathetically in coming to an agreement on a repayment plan for the remaining capital balance; and
- d) remove any adverse information from Miss R's credit file in relation to loan 2, once this has been settled.

In the unlikely event that Miss R has already settled the full outstanding balance of the loan, any payments over the capital amount borrowed should be refunded to her with 8% simple interest per annum from the dates the overpayments occurred to the date this complaint is settled. (HM Revenue & Customs requires EDL to take off tax from this interest. EDL must give Miss R a certificate showing how much tax it's taken off if she asks for one.)

My final decision

For the reasons set out above I am upholding Miss R's complaint in part and require Everyday Lending Limited to put things right as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 3 September 2020.

Michelle Boundy
Ombudsman