DRN-3969937

The complaint

Miss R complains that Everyday Lending Limited trading as Everyday Loans (EDL) irresponsibly agreed a loan for her and didn't offer her an affordable settlement figure.

What happened

EDL agreed a loan of £2,338 for Miss R in June 2021. The total amount owed was £5,771 to be repaid at £240 a month over 24 months (all figures rounded).

Miss R made 11 payments amounting to £2,645 before contacting EDL in May 2022 to request a settlement figure. She explained that her financial situation had become worse and a family member had offered to clear the loan balance for her. She asked for a settlement figure, which EDL gave as £2,186. It said this offered Miss R a saving of £940 over the original agreement.

Miss R felt this settlement figure was too high, given the amount she had repaid. In order to resolve her complaint she asked EDL to recalculate the settlement figure taking into account her worsened financial position due to her personal circumstances and rising living costs.

EDL didn't uphold Miss R's complaint. It said that that the checks it completed prior to lending were reasonable and proportionate. It believed the loan would be sustainable for Miss R over the term as it had found that she would have enough disposable income left each month after meeting her repayments if there were no significant changes to her circumstances. EDL also said that its calculation of the settlement figure was in line with the format prescribed under the relevant legislation, and these early settlement terms were set out in Miss R's loan agreement.

Miss R referred her complaint to us. She said that the loan was unaffordable and resulted in further borrowing. She also said that the settlement figure offered by EDL was too high. Our investigator looked into the complaint and recommended that it be upheld. They didn't find that EDL had gotten anything wrong when it calculated an early settlement figure however, they found that EDL had been irresponsible when it agreed to lend to Miss R as it should have seen from the information it had that the loan was unaffordable for her from the outset.

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 Miss R could afford to meet her repayments out of her 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 to Miss R's circumstances.

The overarching requirement was that EDL needed to pay due regard to Miss R's interests and treat her fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did EDL complete reasonable and proportionate checks when assessing Miss R's application for her loan to satisfy itself that she would be able to make her repayments without difficulty? If not, what would reasonable and proportionate checks have shown and, ultimately, did EDL make a fair lending decision?

I'll start by saying that I have reviewed the settlement figure and calculations that EDL provided and I don't think it got anything wrong in this regard. As I will go on to explain I'm planning to uphold Miss R's complaint for other reasons.

When Miss R applied for the loan, EDL carried out an affordability assessment. It recorded Miss R's income as £2,212 a month, comprising income and state benefits. The breakdown of this was monthly income of £1,926, child benefit payments of £21 a week and child maintenance payments via the Child Maintenance Service (CMS) of £195 a month.

Miss R gave her monthly rent as £650. EDL estimated that Miss R's living costs were £824 (based on data from the Office of National Statistics) and recorded her ongoing monthly financial commitments as £357. EDL considered that this left Miss R with about £380 of disposable income to cover her loan repayments of £240 along with any other unaccounted for expenses. EDL concluded that the loan was affordable for her.

The figures EDL used in the Key Information Affordability sheet it provided to Miss R were slightly different. It noted her income as £2,205, her rent and living costs as above but her ongoing credit commitments figure as £333. This left Miss R with an estimated £400 a month disposable income.

EDL provided copies of the credit file information, payslips and bank statements it relied on and I've reviewed these. The credit file information shows that Miss R had about £13,000 of existing debt across several loans and credit cards, including a hire purchase agreement and loans from communication suppliers. There were four credit cards listed and Miss R was up to her combined limit of £1,500. Miss R had several defaults showing, all of which were several years old.

I don't think any of the credit file information alone would or should have caused EDL to decline to lend to Miss R. She didn't have any recent adverse information recorded on her credit file and she was to use the loan to clear some of her existing debts.

Our investigator found that EDL shouldn't have taken into account the CMS payments when considering Miss R's income. However I see no reason why these couldn't be considered as income in this case where Miss R provided a payment plan for the year from CMS and evidence of regular payments. Our investigator also found that EDL hadn't included the amount Miss R was paying towards her agreements with communication suppliers as shown on the credit file, however EDL said it had considered these costs when estimating Miss R's living expenses using ONS figures and to include them again would likely be double-counting. This seems a reasonable assumption to me, given that ONS figures include spend on communication.

Altogether, I've concluded that the checks EDL carried out were reasonable and proportionate. However, I don't think EDL took full account of the information it had gathered. It seems to me that Miss R was regularly spending more than EDL took into account in its affordability assessment.

The current account statements that EDL saw cover April and May 2021 and show that Miss R made many relatively low value foreign transactions from her account to the extent that she sometimes didn't have enough money left to meet other commitments. These payments amounted to £680 in April and £270 in May and appear to be gaming transactions, which Miss R has confirmed. In April and May Miss R had direct debits returned for insurance and credit card repayments, for example, as she didn't have enough money in her account to meet these. The statements also show that Miss R was borrowing from short term lenders – an existing loan was being repaid at £200 a month.

I think EDL should have seen from this information that it was more likely than not that Miss R wouldn't be able to meet her repayments for this loan without experiencing adverse impacts on her finances or borrowing further. Miss R has provided her bank statements for later months and I can see that her gaming spend continued with almost £900 in June and £300 in July 2021. Miss R took out another short term loan in early June with monthly repayments of £90, and she began repaying a peer-to-peer loan at £200 a month from July.

Taking everything into account, I've concluded that EDL treated Miss R unfairly and without regard to her interests by lending to her on this occasion and it needs to take steps to put things right for her.

Putting things right

I think it's fair that Miss R repays the capital she borrowed as she's had the use of this but I don't think she should pay any interest or charges on this loan, which I've found to have been irresponsible given. In summary EDL should:

- Cap the amount Miss R needs to repay at £2,338; and
- Consider all payments, including fees, Miss R made as payments towards this capital amount; and
    - If Miss R has paid more than this (which I understand is the case) then EDL needs to refund these overpayments to her along with 8% simple interest per annum* from the date of payment to the date of settlement of this complaint. In this case EDL needs to remove any negative information about this loan from Miss R's credit file up to the point of settlement of the complaint; or
    - If in the event that Miss R has not yet repaid the capital, then EDL needs to treat Miss R fairly and with forbearance and due consideration regarding her outstanding capital balance. This may mean coming to an affordable repayment plan with her. Once the loan capital has been repaid, then EDL should remove any negative information about this loan from Miss R's credit file.

If EDL has since sold the debt, it needs to either buy it back or liaise with the current debt owner to ensure Miss R isn't liable for more than the capital she borrowed.

*HMRC 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 given above, I am upholding Miss R's complaint about Everyday Lending Limited trading as Everyday Loans and it now needs to take the steps outlined to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 16 March 2023.

Michelle Boundy
Ombudsman