

## **The complaint**

Miss L complains that Everyday Lending Limited trading as Everyday Loans irresponsibly agreed a loan for her.

## **What happened**

EDL agreed a loan of £3,000 for Miss L in March 2018. The total amount owed was £10,351 to be repaid at £288 a month over 36 months (all figures rounded).

Miss L made eight payments amounting to £2,228 until a direct debit payment was returned in November 2018. EDL confirmed that it hasn't received any further payments from Miss L and that an amount of £4,861 was passed to a third party debt collector in May 2019.

Miss L complained to EDL that she was in a vulnerable position at the time and it should not have agreed to lend to her. She said that she wasn't in the correct frame of mind to make financial decisions, the loan put a massive strain on her financially and emotionally and she fell behind on her rent while trying to keep up with the payments. I understand that Miss L now has a diagnosis of two mental health conditions.

EDL didn't uphold Miss L's complaint. It said that it carried out a reasonable and proportionate affordability check before lending to her and it found that the loan would be sustainable over the term as Miss L had sufficient disposable income to meet her repayments. EDL also said that there was no evidence to show that it should have been aware of her mental health issues at the time or declined to lend to her on that basis.

Miss L referred her complaint to us. Our investigator looked into the complaint and didn't recommend that it be upheld. They concluded that EDL would have found the loan to be affordable had it looked into Miss L's circumstances further before lending to her. They also found that EDL couldn't have reasonably known that Miss L's mental health would deteriorate.

Miss L didn't agree with this recommendation and asked for the complaint to come to an ombudsman to review and resolve. I sent out a provisional decision on 31 January explaining why I thought Miss L's complaint should succeed. Both parties agreed with my provisional findings. This is my final decision which will be legally binding once accepted by Miss L.

## **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.

Both parties agreed with my provisional conclusions and I have no new information or comment to consider. I see no reason to depart from my provisional conclusions and will set out again my reasons for upholding Miss L's complaint in this final decision on the matter.

As before, when making my decision I've 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 L could afford to meet her repayments sustainably, in other words out of her usual means for the term of the loan, without having to borrow further and without experiencing financial difficulty or significant adverse consequences. The checks needed to be proportionate to the nature of the credit (the amount borrowed, for example) and to Miss L's particular circumstances. The overarching requirement was that EDL needed to pay due regard to Miss L's interests and treat her fairly.

The questions I've considered include whether or not EDL carried out a proportionate affordability check before lending to Miss L? If not, what would a proportionate check have shown? Did EDL treat Miss L fairly and with due regard to her interests when it offered the loan? Did it take into consideration Miss L's personal circumstances and how these might impact on her ability to manage her loan?

Let me begin by saying that I am very sorry to hear of Miss L's loss and the difficult circumstances surrounding it.

Miss L shared with us and EDL that she'd lost her daughter two months prior to taking out the loan, which was to pay for funeral costs. EDL's customer notes state that Miss L wasn't on the voter register due to her circumstances and that she had disclosed sensitive information that it didn't record. Miss L told us that her daughter lost her life in her family home and her death was being investigated as a criminal act by the police. Her granddaughter had come to live with her and was unable to access her home.

Miss L said that in July 2018 she became extremely unstable with her mental health. She told EDL in early November 2018 that she was on long term sick leave and didn't have the money to meet her repayments. She provided EDL with a Debt and Mental Health form from her doctor. EDL put her account on hold for a month. Miss L explained to EDL on a call in December that she had been unable to work since the trial which had taken place in July. She was in receipt of statutory sick pay, unable to pay her rent and priority bills, and was applying for universal credit and personal independence payments. Miss L asked for her account to be put on hold until after the anniversary of her daughter's death and EDL agreed. EDL made many unsuccessful attempts to contact Miss L from February 2019 and her account was eventually passed to a third party debt collector in May.

I've started my review by looking into how EDL carried out its affordability assessment. EDL provided copies of the credit file information, payslips and bank statements it relied on to make its lending decision. The credit file information shows that Miss L had a recent existing loan of £1,000, was almost up to her credit card limit of £2,600 and had an overdraft of £2,270. She didn't have any adverse information recorded about her existing accounts. EDL estimated Miss L's monthly income as £2,466. She gave her rent as £500 and EDL estimated that Miss L's living costs were £863 (based on data from the Office of National Statistics) and recorded her ongoing monthly financial commitments as £292. EDL considered that this left Miss L with over £800 of disposable income to cover her loan repayments of £288 along with any other unaccounted for expenses, and concluded that the loan was affordable for her.

The payslip EDL relied on was from the week before and showed that Miss L was on an hourly rate and was paid £297 a week. The bank statements EDL saw covered a month from

27 January to 27 February 2018 and show Miss L's weekly wage deposits and a monthly deposit mid-February of £2,254. EDL worked out Miss L's average monthly wage of £2,466 from the year to date figures shown on the payslip. It seems to me that EDL knew Miss L's income was made up of a base wage and variable commission.

The regulations state that a lender should be careful not to presume that supplementary income, being received at the time the assessment is being undertaken, will continue to be received in perpetuity or received at the same level. The examples given in the regulations include performance-related bonuses and overtime.

I appreciate that in this case, EDL took into account Miss L's payment history over the year to date when factoring in her performance-related pay. And in other circumstances I might consider that the checks EDL carried out were reasonable and proportionate. However, EDL knew that Miss L had recently been bereaved in very difficult circumstances and that a criminal investigation was taking place. The regulator considers a vulnerable consumer to be someone who, due to their personal circumstances, is especially susceptible to detriment.<sup>1</sup> Examples of risk factors for vulnerability include bereavement and income volatility.

It seems to me that EDL considered that Miss L was vulnerable as the customer notes state that this was a very difficult interview to be involved with and Miss L's file was flagged as having been treated with care at a difficult time. I think there was a clear risk that Miss L's circumstances could have an adverse impact on her income and that she might not be able to meet her repayments for the loan, given the proportion of her income which was performance-related. I don't think EDL took this into consideration when assessing the sustainability of the loan for Miss L and it should have taken further steps to understand her means before lending to her.

Miss L explained to us that her commission was paid monthly in arrears and because it was payable on delivery of goods there could be a lag of several months before this would be paid. She provided us with her bank statements covering November 2017 to May 2018 which show she was paid £841 commission in March, the day she took out the loan, and £651 in April. This level of reduction in income meant that the loan repayments were not affordable for Miss L. I think that some level of income shock was foreseeable and I think EDL would have confirmed this had it carried out a proportionate check. I've concluded that EDL treated Miss L unfairly and without regard to her interests by lending to her on this occasion.

I have also considered what Miss L told us about her ability to make financial decisions at that time. Miss L said that she'd explained her circumstances to EDL, that she was distressed in the office and unable to fully understand the loan process or what she was expected to repay. She told us that she was in shock and suffering from the trauma of her experience. EDL's customer notes state that Miss L was very upset at the time and, as mentioned, that it was a very difficult application interview.

Miss L shared with us that she has since been diagnosed with two health conditions. She also told us in late 2022 that her mental health had declined in recent months and she has been unable to tackle day to day living let alone anything beyond that, in other words financial matters. Let me say at this point that I do not in any way doubt what Miss L has told us about her mental health at the time or later. Miss L has been consistent in what she's told EDL and this service about these matters and about her financial situation.

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<sup>1</sup> FCA Occasional Paper No.8 published February 2015: <https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability>

In its final response to Miss L's complaint EDL said that it found no evidence that the branch should have been aware of Miss L's mental health issues. It also said that, as per the regulations, it shouldn't refuse to lend to someone on the basis that they had a mental health condition. It needed to assume that customers had the mental capacity to make decisions unless it knows, is told or reasonably suspects that a customer lacks capacity.

The fact that Miss L was suffering at the time with later diagnosed conditions doesn't automatically lead me to find that she wasn't capable of making a responsible borrowing decision. And I haven't seen enough in the information I have about Miss L's finances to show that her mental health conditions were impacting on her ability to make decisions about her finances. However, as I've explained above, I am upholding Miss L's complaint for other reasons and I've set out below what EDL needs to do now to put things right for her.

### **Putting things right**

I understand that Miss L has repaid £2,228 of her £3,000 loan. I haven't found that she was constrained in her ability to make a responsible borrowing decision at that time and I don't know enough about her current circumstances to consider that there is no reasonable prospect of EDL recovering this debt. I've concluded that it's fair that Miss L 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 L needs to repay at £3,000; and
- Consider all payments, including fees, Miss L made as payments towards this capital amount; and
  - If Miss L has paid more than this 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 L's credit file up to the point of settlement of the complaint; or
  - If in the event that Miss L has not yet repaid the capital, which I understand to be the case, then EDL needs to treat Miss L 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 L's credit file.

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

\*HMRC requires EDL to take off tax from this interest. EDL must give Miss L a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

I am upholding Miss L's complaint against Everyday Lending Limited trading as Everyday Loans for the reasons I've explained above and require it to take the steps I've outlined to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 3 April 2023.

Michelle Boundy  
**Ombudsman**