DRN-4115370

The complaint

Miss S complains that Everyday Lending Limited (EDL) was irresponsible to lend to her on two occasions.

What happened

EDL agreed two loans for Miss S. The first was for £1,500 agreed in July 2007. This was to be repaid over two years with 23 monthly repayments of £126 following an initial payment of £47. The second was for £2,200 agreed in December 2007. This was to be repaid over 23 months with repayments of £181 following an initial payment of £69. £1,644 of this loan capital was used to repay Miss S's first loan, the remaining £556 was paid to her.

The total amount to be repaid under each agreement included interest and fees. Miss S was also granted ancillary loans for loan payment and life insurance each time.

Miss S complained to EDL that loans were unaffordable for her and should not have been agreed. EDL didn't uphold Miss S's complaint. It said that the loans were for debt consolidation and it carried out reasonable and proportionate affordability checks before agreeing to lend. These included checking Miss S's bank statements and payslips and her credit file. It estimated that Miss S would have enough disposable income to meet her loan repayments and so found the loans to be affordable.

Miss S referred her complaint to us. Our investigator looked into what happened. They found that EDL carried out proportionate checks which didn't raise any concerns when Miss S applied for her first loan. They found that it would have been proportionate for EDL to have carried out further checks when Miss S applied for a second loan, but that such checks wouldn't have led to a decline. They concluded that EDL hadn't been irresponsible to lend to Miss S on either occasion.

Miss S didn't agree with this conclusion and asked for her complaint to come to an ombudsman for a review and it came to me. I issued a provisional decision on 21 April 2023 explaining why I planned to uphold Miss S's complaint about her second loan but not her first. Miss S didn't wholly agree with my findings and I've had no further comments or information from EDL.

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 taken into consideration what Miss S said in response to my provisional decision. Having looked at everything again, I remain of the view that EDL was irresponsible to agree a second loan for Miss S and I am upholding her complaint about that. I am not upholding her complaint about the first loan. I appreciate that will be disappointing news for Miss S and I'm sorry I can't provide the resolution she hoped for. I'll explain my reasons for my conclusions again in this final decision, and will refer to Miss S's response as appropriate.

As before, I've also had regard to the regulator's rules and guidance on responsible lending 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 and I've followed that here. I won't refer to the regulations in detail but will summarise and refer to them where appropriate.

The Office of Fair Trading (OFT) was the regulator when Miss S borrowed from EDL. Its general guidance said that lenders needed to take reasonable care when making loans. This included carrying out proportionate checks on a borrower's ability to repay the loan taking into account the particulars of the loan and the degree of risk to the borrower. It would be irresponsible to lend without taking full account of the borrower's interests.

The OFT later published its 'Irresponsible Lending Guidance' (ILG) which set out the obligations on lenders before and after agreeing credit. Before agreeing credit EDL needed to check that Miss S could afford to meet her repayments in a sustainable manner. This was likely to involve more than solely assessing the likelihood that Miss S could repay the credit as it meant Miss S being able to meet her repayments out of her normal income without undue difficulty, in particular without incurring or increasing problem indebtedness.

The regulations weren't prescriptive about what checks EDL needed to carry out in order to reasonably assess whether or not Miss S would be able to meet her repayments sustainably. In general, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks where an applicant had a relatively low level of income, or was entering into an agreement with a relatively long term or high repayments.

With this in mind, my main considerations are did EDL complete reasonable and proportionate checks when assessing Miss S's applications for her loans to satisfy itself that she would be able to make her repayments in a sustainable manner? If not, what would reasonable and proportionate checks have shown and, ultimately, did EDL make fair lending decisions?

Loan 1 – July 2007

EDL recorded Miss S's average monthly income as £768 when she applied for her first loan. It provided copies of the June 2007 payslip and bank statements for May which it relied on. Miss S's payslip for June showed a net pay of about £950 which included overtime payments. Her bank statement for May showed £960. EDL noted that Miss S was living with her parents, had a car and had been working part-time but was now full-time.

EDL also checked Miss S's credit file and noted that she had existing debts of £14,675 with combined monthly repayments of £306. This loan was to be used in part to pay the balances on two credit cards of £1,051 potentially reducing Miss S's existing monthly debt payments by £32. EDL knew Miss S's continuing debts would amount to about £13,600 or over £16,500 including its loan. Her monthly repayments would likely be £274 plus its loan repayment of £126 bringing Miss S's total monthly repayments on debt to £400 going forwards.

EDL said it used 35% of Miss S's net income to estimate an approximate personal expenditure with a minimum of £400. This left Miss S with a surplus of about £150 after she'd met all her commitments. I appreciate that Miss S was living with her parents and so might have had fewer financial responsibilities than someone who was not sharing a household, however given her level of existing debt I think EDL ought to have looked into her circumstances in more depth before agreeing to lend to her.

Miss S provided her bank statements from around that time. The direct debits showing included mobile network and phone costs, home insurance, eyecare and gym membership – a total of about £150. EDL knew Miss S was running a car – one of her monthly repayments was £176 for a car loan - so she'd have petrol and running costs. Miss S also told us that although she was living with a parent she contributed £100 a month to her food and household bills, and that she had other essential expenses, such as clothing for example. I can't identify all of this spending on Miss S's bank statements but it seems reasonable to me.

With the information I have and reviewing the bank statements, I can't say that Miss S's living costs came to obviously more than EDL had estimated. It follows that I don't think EDL would have come to a different view of the affordability of the loan and would likely have agreed to lend to her, even if it had looked into her circumstances further before doing so.

I have considered whether EDL made a fair lending decision here and took full account of Miss S's interests, given the amount of existing debt she had. While the above assessment found that Miss S would likely be able to meet her repayments, it also shows that agreeing this loan for her would mean she'd need to spend 40% of her declared income on repaying debt, which was a sizeable proportion. Bearing in mind this was Miss S's first loan with EDL, some of which was used to clear credit card balances, and bearing in mind her circumstances, I've found that EDL wasn't irresponsible to lend on this occasion.

Miss S said in response to my provisional findings that EDL noted unplanned overdraft fees on her bank statements when she applied for her first loan and that this should have triggered it to look into her circumstances further, particularly her working hours. She said that, even in 2007, under £1,000 for a full time wage was extremely low and having a low income should have prompted EDL to carry out further checks and review what her future situation might be. Miss S said that EDL was irresponsible to have agreed her first loan because she'd advised it that she was a university student and that she would be working full time in the summer months until she returned to university in the autumn.

As I've explained above, I agree with Miss S that EDL ought to have looked into her circumstances further before lending to her. EDL's customer contact records noted that Miss S had been fully qualified since April, a few months prior, so I don't think EDL would have considered a return to university to be a possibility unless Miss S specifically mentioned it. I haven't seen anything in the information I have that shows EDL was aware or had been advised that Miss S planned to return to her studies after the summer. Miss S said that, as it happened, she didn't in fact return to university then. Altogether, I can't find that EDL should or would have uncovered what Miss S intended to do regarding any future studies in this case.

Miss S also said that EDL never mentioned the loan interest to her and that she was misled by the small amount of the first payment. Miss S said that it didn't make financial sense for her to swap a larger payment to EDL for the small payment she was making towards the debts she intended to consolidate. She said that she only gained additional funds of £500 from the initial loan so it was an extremely small amount of money to warrant the payment of nearly an extra £90 per month.

I've reviewed the loan documentation that Miss S signed and I can see it states the total charge for the credit and the monthly repayment amounts, so I'm satisfied that Miss S was informed about the cost of the loan. I don't know if Miss S paid less interest overall by consolidating some of her credit card debt with this loan. I appreciate that with hindsight Miss S feels she might not make the same decision about taking out the loan but I can't find EDL was wrong to offer it to her because of this.

Loan 2 – December 2007

EDL recorded that Miss S's circumstances remained unchanged when she applied for a second loan. She was still living with her parents and earning about £935 a month. As before EDL checked Miss S's payslips, some of her bank statements and her credit file.

EDL noted that Miss S's existing debts came £16,500 and she was spending £423 a month meeting her repayments, including £126 on her first EDL loan. This second loan was used to refinance her previous loan and for spending money. The total owed on this loan was £4,232 with repayments of £181. Agreeing this increased Miss S's debts to over £19,000 and her monthly debt repayments to almost £480, over half of her monthly income.

Again, EDL said it used 35% of Miss S's net income to estimate an approximate personal expenditure with a minimum of £400. This left Miss S with an estimated surplus of £55 each month. As before, the bank statements I've seen don't contradict this level of spending. I think there was a clear risk that Miss S wouldn't be able to meet her repayments for this loan over the two year term and meet any unexpected costs with this level of surplus. The bank statements EDL saw showed three unplanned overdraft charges in November 2007 amounting to £100, for example. Altogether, I don't think EDL took full account of Miss S's interests by lending to her a second time because of the risk to her of not meeting her repayments over the loan term.

Furthermore, by agreeing this credit for Miss S, EDL potentially committed her to spending more than half of her income on debt repayments. It seems Miss S was already reliant on credit and was rarely out of her overdraft and, as mentioned was paying unplanned overdraft fees. The two credit card balances she'd repaid with her first loan had built up again and she'd opened new lines of credit. I think it was foreseeable that Miss S was likely to have problems meeting her repayments for this loan and I've concluded that EDL was irresponsible to have lent to her.

Miss S fell into arrears with her loan within six months and by October 2008 had set up a repayment plan with EDL. In 2011 Miss S was being supported by a national advice charity and later entered into a Trust Deed. I understand that EDL's loan wasn't included in the deed, and that Miss S repaid more than the amount she borrowed before EDL wrote off an outstanding balance.

Miss S says that this loan started her on a downward spiral and she went on to take out more credit which included rolling short term loans for a significant period of time. It's clear to me that Miss S lost out by taking on this loan - she paid interest and fees, and likely had adverse information recorded on her credit file. I've set out below what EDL needs to do to put things right for her.

Putting things right

I've concluded that EDL was irresponsible to have agreed to lend to Miss S a second time. As Miss S had the use of the money she borrowed I think it's fair that she repays this, but she shouldn't have to pay any interest, fees or premiums associated with the loan agreed in December 2007.

To put things right for Miss S, EDL should:

a) refund all payments that Miss S made above the capital amount of £2,200 including any payments made for associated insurances; and
b) add 8% simple interest per annum* on these overpayments from the date they were paid until the date this complaint is settled; and
c) remove any adverse information about this loan from Miss S's credit file.

As mentioned, EDL wrote off an outstanding balance on the loan. If EDL sold this debt and Miss S is still being asked to repay this (which I think is unlikely) then EDL needs to work with the current debt owner to carry out the above redress.

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

My final decision

For the reasons I've explained above I'm upholding Miss S's complaint in part and Everyday Lending Limited now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 June 2023.

Michelle Boundy
Ombudsman