Complaint

Miss G 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.

Background

EDL agreed three loans for Miss G: a loan of £3,000 in June 2014; a second of £4,576 in January 2015 and a third of £10,000 in February 2016. The second loan was used to repay the first. Some of the information EDL provided is shown in the table below (all figures rounded to the nearest pound).

Loan	Start date	End date	Principal	Monthly repayments	Term (months)
1	30/06/2014	05/01/2015	£3,000	£330	13
2	05/01/2015	20/10/2015	£4,576	£377	24
3	23/02/2016	04/04/2018	£10,000	£491	36

Miss G says that at that time she was borrowing from other lenders, including short term high cost lenders, and spent considerable sums on gambling. She provided a credit file report and bank statements to support her account of her financial difficulties.

Our adjudicator assessed the complaint and found that EDL should have gone further in its affordability checks and, had it done so, would have seen that Miss G wasn't likely to be able to repay her first loan sustainably. She recommended that EDL refund the interest and charges Miss G paid on her first loan, along with 8% simple interest per annum.

EDL agreed to put things right as the adjudicator recommended but Miss G didn't agree with the recommendation. She said her circumstances hadn't changed throughout the time she borrowed from EDL and felt her complaint about her later loans should also be upheld. Miss G asked for the complaint to come to an ombudsman to review and resolve, and so the complaint came to me.

I issued my provisional decision on 3 September 2020 explaining why I was thinking of coming to a different view of Miss G's complaint and provisionally found that EDL was irresponsible when it agreed to lend to her on all three occasions. I've attached an extract from that provisional decision to the end of this document, and it forms part of this final decision.

I gave both parties four weeks to respond with any comments or new information for me to consider. Miss G has accepted my provisional findings and conclusions but EDL has not responded.

My findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

As neither party has provided anything further for me to consider, I see no need to depart from my provisional conclusions (see extract). It follows that I uphold Miss G's complaint in full and require EDL to put things right for her as set out below.

What EDL should do to put things right

Miss G shouldn't repay more than the capital amounts she borrowed for her three loans agreed in 2014 to 2016.

So to put things right for Miss G, EDL should:

a) refund all interest, fees and charges that she paid for her loans; and
b) add 8% simple interest to these payments from the date they were made to the date the complaint is settled; and
c) remove any adverse information from Miss G's credit file in relation to loans 1 and 2 and remove all information about loan 3 as any information recorded about it was likely to be adverse.

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

My final decision

As I've explained here and in my provisional decision, I'm upholding Miss G's complaint about Everyday Lending Limited and require it to put things right for her as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 14 November 2020.

Michelle Boundy
Ombudsman

EXTRACT FROM MY PROVISIONAL DECISION

My provisional findings

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 plan to uphold Miss G's complaint in full. I appreciate this will be very disappointing for EDL and 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 G. 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 5.3.1G 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; without having to realise security or assets (CONC 5.3.1G - 6) or without incurring or increasing problem indebtedness (ILG[1] 4.3).

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);

[1] *The Office of Fair Trading was the previous regulator and it produced a document entitled 'Irresponsible Lending Guidance' which the FCA referenced in its consumer handbook. CONC 5.3.1G – 6 specifically referenced ILG 4.3.*

- 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).

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

- did EDL complete reasonable and proportionate checks when assessing Miss G'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?

<u>Did EDL complete reasonable and proportionate checks?</u>

EDL says it gathered information from Miss G about her income and rent. It calculated an amount for her general living expenses and checked her credit file. 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	Loan 3
Income	£2,222	£2,222	£3,044
Rent	£450	£450	£310
Creditor repayments	£0	£613	£381
Calculated living expenses	£778	£778	£1,300
Monthly cost of EDL loan	£330	£377	£491
Calculated remaining income	£585	£494	£815

EDL says that its assessment showed that for all loans the monthly repayments would be affordable for Miss G, leaving her with several hundred pounds a month to spare. The customer notes show EDL verified some of this information, for example it verified Miss G's income via a payslip and her employment status with her current employer. On the occasions it found existing debt it seems Miss G was borrowing to consolidate it.

Our adjudicator found that EDL needed to go further in its checks, given the amount Miss G 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 for EDL to have looked into Miss G's spending in more detail. It seems for each loan EDL looked at some of Miss G's bank statements but I don't know to what extent it used these to explore or verify her spending.

However, I am not going to investigate where further checks may have led EDL. I've reviewed the bank statements it quoted in its customer notes and am currently of the view that EDL didn't make fair lending decisions when it agreed to lend to Miss G based on the information it already had at the time.

<u>Did EDL make fair lending decisions?</u>

Loan 1

EDL's customer notes state that it saw Miss G's current bank account statements from a particular high street bank (Bank A) covering several weeks in May and June of 2014. EDL noted that it saw gambling on the bank statements along with balances of over £130,000.

Miss G has supplied a copy of these bank statements, which show:

- gambling transactions of the order of tens of thousands of pounds on a weekly basis;
- frequent transfers in and out between several accounts and large cash withdrawals, sometimes daily;
- that her salary was depleted within a couple of days.

Miss G says her finances at the time were not in a good state and she opened and closed many bank accounts. She explained that the high balance was due to a large deposit the previous month from gambling winnings. Miss G said *"Despite winning some money and clearing debts in May 2014 I continued to gamble, waste away money, borrow more money and started the cycle of debt all over again."*

Altogether, it's clear that Miss G's finances were chaotic and her spend was unpredictable to the extent that it was unlikely that she would be able to sustainably meet her repayments for this loan over the lifetime of the agreement. And so I don't think EDL treated Miss G fairly when it agreed to lend to her.

Loan 2

In January 2015, EDL agreed another loan for Miss G. I understand that by that point she was overdrawn by over £1,000 on her account with Bank A. The customer notes say that the purpose of this loan was to consolidate Miss G's overdraft and her first EDL loan. The lender saw statements for what it called Miss G's main salary account for November and December 2014 (now Bank B). It noted that she had borrowed from payday lenders and was *"gambling still like last time…to a lesser extent".*

Miss G has supplied a copy of these bank statements. Over these two months she'd borrowed and repaid eight short term loans and, while she'd spent less through gambling-related transactions she'd still spent almost £3,000 in this way. She made transfers to another account and had several unpaid transaction fees.

It seems to me that Miss G's spending pattern hadn't substantially stabilised. So, as with her first loan, I think EDL should have seen from the information it had that Miss G wasn't likely to be able to meet her repayments for this loan in a sustainable way. As it happens, Miss G incurred several missed payment fees before repaying the loan in full in October 2015. She says this was using proceeds from the sale of a property.

Loan 3

Miss G took out her third loan in February 2016, some four months after repaying her second and for more than double the amount. The customer notes say that the purpose of this loan was to repay a £3,500 loan from a high cost credit provider and to pay for a holiday. And that EDL saw several weeks statements from two accounts Miss G held with another bank (Bank C), which it noted didn't show any gambling transactions.

I've reviewed these bank statements and while it is true that there wasn't any identifiable evidence of gambling, Miss G was still managing her money through several different accounts and, in addition to frequent transfers in and out, there were several large bill payments with her name as reference.

The credit file information gathered by EDL shows Miss G was still borrowing from short term lenders and had taken out several short term loans the month before, at least one of which was unpaid. The high cost loan which Miss G wanted to repay had been taken out just the month before. I think EDL ought to have been concerned that Miss G was relying on credit to meet an ongoing need. She had only recently taken out a large loan from a high cost lender and yet wanted to take out further credit to repay this and to spend further.

I think it was obvious by this point that Miss G's financial situation was such that agreeing further credit for her was likely to add to her financial difficulties. Miss G now needed to pay more interest on top of the interest she owed to the high cost provider. She'd recently been indebted to EDL for about 16 months and was now asking to borrow more than twice what she had before. It doesn't seem to me that she'd managed to free herself of a need for credit and agreeing this loan simply prolonged her indebtedness, potentially for another three years. Furthermore, the number of times she'd borrowed from EDL and the amount she was now borrowing was likely to be seen negatively by other lenders, potentially keeping her in the market for higher cost loans.

Taking everything into account, I don't think EDL treated Miss G fairly when it agreed to lend to her a third time. Miss G didn't manage to repay this loan as agreed. She eventually entered into a debt management plan with a national charity in autumn 2016 and repaid this loan in 2018. She says this was with gambling funds.

Miss G says *"I have been severely affected both financially and mentally. With loan companies lending so easily to me when my credit report showed missed and late payments and my bank statements showing gambling debts they have assisted me further into debt. I have suffered mentally with the spirals of debt leading to, at times, uncontrollable gambling to try and win some money to pay off the debt."*

I don't doubt that Miss G has had a very difficult time of it and I'm sorry to hear of this. I understand that her loans have been repaid. In order to put things right for her in respect of EDL's irresponsible lending decisions, I think she should not have to pay any interest, fees or charges associated with these loans and so should have these amounts refunded to her, along with compensatory interest. I've set out in detail below what should happen now.

What EDL should do to put things right

Miss G shouldn't repay more than the capital amounts she borrowed for her three loans agreed in 2014 to 2016.

So to put things right for Miss G, EDL should:

a) refund all interest, fees and charges that she paid for her loans; and
b) add 8% simple interest to these payments from the date they were made to the date the complaint is settled; and
c) remove any adverse information from Miss G's credit file in relation to loans 1 and 2 and remove all information about loan 3 as any information recorded about it was likely to be adverse.

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

My provisional decision

I plan to uphold Miss G's complaint and require Everyday Lending Limited to put things right as I've set out above.

I'll wait four weeks to see if either party has anything further to add – before considering my decision on this complaint once more.

-END-