complaint

Mr G complains about the payday loans Lending Stream LLC lent to him. He says the necessary checks weren't carried out before lending to him and that the loans were unaffordable.

background

I issued a provisional decision on 2 November 2017 where I set out the background to this complaint. A copy of that decision is attached and forms part of this final decision.

In my provisional decision, I set out why I was minded to uphold more loans than the adjudicator. In fairness, I asked both parties to let me have any further comments they wished for me to consider within three weeks. Mr G said he had no further comments and Lending Stream didn't respond.

This is the final stage of our complaint process and if Mr G accepts my decision, it becomes legally binding.

my findings

I've again 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 account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

As neither party has provided any information that changes my mind, I see no reason to depart from the conclusions set out in my provisional decision. I think proportionate checks would have shown that Mr G was unable to afford loans 2 onwards.

putting things right

As I don't think that Lending Stream should have given Mr G any of the loans from (and including) March 2015 onwards I require Lending Stream to;

- refund any interest and charges paid by Mr G in respect of the loans.
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- remove any adverse information recorded on Mr G's credit file in relation to these loans.

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

my final decision

I uphold Mr G's complaint in part and require Lending Stream LLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 December 2017.

Oyetola Oduola
ombudsman

copy of provisional decision

complaint

Mr G complains about a number of payday loans Lending Stream LLC lent him. He says the loans were unaffordable and that Lending Stream didn't carry out the necessary checks before lending to him.

background

From February 2015 to September 2016, Mr G took 26 loans with Lending Stream. The loans were instalment loans – payable over six months. The loan amounts varied from £70 to £220.

For clarity, a summary of Mr G's borrowing history can be found in the appendix at the end of this decision. The information Lending Stream provided shows that Mr G repaid all his loans without incurring extra charges.

Mr G complained to Lending Stream about all the loans, Lending Stream didn't uphold his complaint. It said that it carried out the necessary checks and the checks showed that Mr G could afford the loans he was given. It also said that it relied on the information Mr G provided when making its lending decision.

Unhappy with Lending Stream's response, Mr G brought his complaint to this service where it was looked at by one of our adjudicators. Our adjudicator thought that from loan three onwards, Lending Stream carried out insufficient checks and had it carried out sufficient checks it wouldn't have lent to Mr G. Our adjudicator didn't recommend that loans one and two should be upheld.

Lending Stream didn't agree with the adjudicator's findings – in summary, it said its checks showed that Mr G had sufficient disposable income to afford the loan repayments.
As the complaint wasn't resolved, it has come to me – an ombudsman for a 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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.
Lending Stream was required to lend responsibly. It needed to make checks to see whether Mr G could afford to pay back each loan before it lent to him.

So, in making this decision I've first considered whether Lending Stream did everything it should have when assessing Mr G's credit applications. And, following on from this, I've thought about whether any assessment failings resulted in Lending Stream agreeing to lend to him when it should have known that it would be difficult for him to repay.

At the time of the loans, this type of borrowing was regulated by the Financial Conduct Authority (FCA). It's rules (specifically CONC 5.2) states that lenders must undertake an assessment of creditworthiness of the customer and consider "the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period".

Essentially Lending Stream needed to take reasonable steps to check that Mr G could afford to meet each loan repayment in a sustainable manner when it fell due and without a negative impact on his finances.

So even though Mr G repaid all his loans in full that doesn't automatically mean they were affordable for him or that he repaid them in a sustainable manner. In other words, I can't say that because Mr G repaid all his loans, he was able to do so out of his normal income and without further borrowing.

did Lending Stream carry out proportionate checks?

Lending Stream has told us what checks it carried out. It has said it asked Mr G for details of his income and expenditure before it lent each loan. It also said that it searched Mr G's credit file and there were no defaults found on the file.

Lending Stream recorded Mr G's income as ranging from £1252 to £1450 and his monthly expenditure ranged from £412 to £848. Although Lending Stream hasn't provided the full results of its credit searches, it has provided the credit scores it says it obtained as a result of its interpretation of the data on Mr G's file. The credit score recorded ranges from 689 to 767.

I think the information Lending Stream collected was sufficient for loan one. This was Mr G's first loan and there was nothing in his circumstances that I think should have prompted Lending Stream to do more at that stage. Taking into account Mr G's declared disposable income of £603 and the maximum repayment of £51 for this loan, it looked like Mr G could comfortably afford the loan repayments when they fell due.
However, I'm concerned that Lending Stream's checks showed that between loans one and two, Mr G's credit score reduced and the number of active accounts increased from five to eight – these could have been short term loans. Also, although the balance on his active accounts had also increased by at least £700, Mr G told Lending Stream that that his expenditure decreased by the time of the second loan. For loan one he'd declared his expenses were £618 but when he took loan two a month later he said they were £443.

I think this discrepancy should have prompted Lending Stream to ask further questions, it should have wanted to know about Mr G's short term commitments as well – especially as the loan amount was almost double the amount of the first loan. And the highest repayment he was going to have to make in April 2015 for both loans was almost £140.

Lending Stream says it asked about credit commitments but I haven't seen anything to show that it asked specifically about short term loans. I don't think it was proportionate for Lending Stream to rely solely on what Mr G told it, without reacting to the information it found in its search. As such, I don't think the checks for this loan went far enough.

By the time Lending Stream lent Mr G loans three and four, his first two loans were still outstanding and the credit file check results which Lending Stream obtained show that his number of active accounts and balances had increased. As Lending Stream knew this, I think it should have been questioning the information it had including the reduced monthly expenditure of £412 declared by Mr G. As it didn't, I don't think the checks went far enough. Lending Stream should have been reacting to the information it knew about Mr G and not just relying solely on what Mr G told it. I think it should have been checking what short term commitments Mr G had and independently verifying the information it received.

Loan five was now Mr G's fifth loan in three months and his previous four loans were still active and so he was due to make repayments for five loans in one month. This meant that the amount he was due to repay June was almost £260. I agree with Lending Stream that having multiple loans doesn't necessarily mean they were unaffordable but, I think having multiple loans in the way that Mr G did – five active loans at the same time – was enough to prompt Lending Stream to make further checks. As Mr G's borrowing trend continued, I think from loan five onwards, Lending Stream should have been looking to build a clear picture of Mr G's financial circumstances and taking reasonable steps to verify what it was told before agreeing to lend to him. And, I don't think the checks Lending Stream carried out from this loan onwards were proportionate or sufficient.

what would proportionate checks have shown?

Mr G has provided copies of his bank statements and his credit file. Lending Stream has said that it wouldn't ask for bank statements as this would be a breach of the Data Protection Act. I've used his bank statements because it is what Mr G has provided but I'm not saying Lending Stream had to ask for bank statements. However I think it has to show that it took reasonable steps to understand Mr G's financial circumstances beyond what it asked for in the checks it carried out. And from the fifth loan onwards, Lending Stream should have been taking steps to independently verify Mr G's financial circumstances before lending to him.

At the time of loan two, Mr G had been borrowing from two other short term lenders over a long period and he had outstanding payday loans, rolling credit and longer term loans. From what I can see the amounts outstanding were such that they left him with insufficient disposable income from which to repay the sum of around £140 due for loans one and two in April 2015.

From loan three onwards, further checks into Mr G's financial circumstances would have shown Lending Stream that Mr G was gambling significantly on a regular basis throughout his borrowing from it – in some months he gambled over £1,000 and I can see that in October 2015, he gambled over £3,000. Mr G's gambling continued through to his last loan in September 2016 and in the month before the last loan was lent, he spent over £850 on gambling transactions. Also, his income varied each month from £1239 to around £1580 and he was borrowing from at least five other short term lenders. Mr G wasn't in a position to sustainably repay these loans and Lending Stream would have seen that he was supplementing his income with loans from other lenders.

At the point Mr G took loan seven I think that Lending Stream failed to meet its obligations as a responsible lender - at that point Mr G hadn't repaid loans one to six. He did repay loans one and two on the day he took loan seven, but it still meant that he had five live loans to repay. The amount he borrowed for loan seven was the highest yet at £220 and this was his seventh loan in five months. Repayments were going to be well in excess of £200 – even approaching £250. But Lending Stream didn't do any more checks than it did when it lent him loan one a few months before.

The regulations state that a firm must carry out an assessment of the potential for commitments under an agreement to adversely impact the customer's situation, taking into account the information of which the firm is aware at the time the agreement is to be made.

They went on to say that reasonable steps should be taken to assess the customer's ability to meet repayments under the agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences. And they explained that "sustainable" meant that the customer should be able to make repayments without undue difficulties and in particular make repayments on time while meeting other reasonable commitments and without having to borrow to meet repayments.

The regulations added that a firm should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information (including information supplied by the customer) on an application for credit relevant to a is complete and correct. And it was not generally sufficient for a firm to rely solely for its assessment on a statement about income and expenditure provided by the consumer.

Had Lending Stream done proportionate checks from loan two it would've seen that Mr G was heavily reliant on short term lending. And by not carrying out any further checks it failed to carry out an adequate assessment of Mr G's creditworthiness. Reasonable steps would've shown it that Mr G wasn't able to meet his repayments of the loans he took with Lending Stream in a sustainable manner- this would've been obvious to Lending Stream when he repaid loans one and two on 17 June 2015 but borrowed a further £220 – meaning he now had five outstanding instalments loans – all tying him in to make repayments until the end of 2015.

Adequate assessments are likely to have shown Lending Stream that Mr G's financial circumstances were very fragile and that he was supplementing his income with sequentially borrowing short term loans. This wasn't a sustainable position and I don't think Lending Stream as a responsible lender should have lent to him in these circumstances. And he has lost out as a result.

It follows that I don't think that Lending Stream should have given Mr G any of the loans from loan two onwards.

how I propose Lending Stream should put things right

As I don't think that Lending Stream should have given Mr G any of the loans from (and including) March 2015 onwards I intend to require Lending Stream to;

- refund any interest and charges paid by Mr G in respect of the loans.
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- remove any adverse information recorded on Mr G's credit file in relation to these loans.

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

appendix

loan number	loan date	loan amount (£)	date repaid
1	12-Feb-2015	120	27-Jun-2015
2	8-Mar-2015	200	27-Jun-2015
3	16-Apr-2015	100	10-Aug-2015
4	18-Apr-2015	100	10-Aug-2015
5	2-May-2015	150	10-Aug-2015
6	6-Jun-2015	70	10-Aug-2015
7	27-Jun-2015	220	10-Aug-2015
8	28-Jul-2015	90	10-Aug-2015
9	23-Oct-2015	150	6-Apr-2016
10	19-Nov-2015	200	6-Apr-2016
11	21-Nov-2015	70	18-Dec-2015
12	12-Dec-2015	150	16-Feb-2016
13	5-Jan-2016	70	6-May-2016
14	12-Feb-2016	110	16-Feb-2016
15	16-Mar-2016	100	7-May-2016
16	18-Mar-2016	130	27-Aug-2016
17	29-Mar-2016	70	6-May-2016
18	7-Apr-2016	300	3-Jul-2016
19	15-May-2016	80	29-Aug-2016*
20	16-May-2016	140	12-Sep-2016*
21	21-May-2016	160	12-Sep-2016
22	5-Jun-2016	80	28-Aug-2016
23	3-Jul-2016	130	12-Sep-2016
24	27-Aug-2016	200	12-Sep-2016
25	28-Aug-2016	190	12-Sep-2016
26	2-Sep-2016	90	12-Sep-2016

*the repayment schedules from Lending Stream shows that both these loans were repaid on 28 November 2016 while the loans' information spreadsheet shows the repayment dates on the table.