

complaint

Mrs M has complained about the instatement loans she's taken with Lending Stream LLC (Lending Stream) between June 2016 and April 2017. Mrs M says the loans weren't affordable and Lending Stream didn't carry out proper affordability checks

background

The background to this complaint was set out in my provisional decision I sent in December 2017. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Mrs M has told us she doesn't have anything further to add. Lending Stream has given us some additional comments.

I've carefully considered everything Lending Stream has told us. In summary it said;

- Mrs M created a strong repayment history with Lending Stream.
- Lending Stream's credit checks showed that Mrs M hadn't defaulted on loans with other lenders.
- Bank statements would only be asked for if there were additional checks that needed to be completed before approving each loan and Lending Stream wouldn't ask for bank statements due to the Data Protection Act.
- When Lending Stream became aware of Mrs M's financial difficulties it offered assistance.
- Lending Stream reiterated its offer to waive the interest and charges applied to the final loan and agree to set up an affordable repayment plan.

my findings

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I explained in my provisional decision, there was no set list of checks Lending Stream had to do before it agreed to lend. And I accept that early on in chain of borrowing it's reasonable for Lending Stream to rely on information Mrs M had provided. And for the early loans, the information Mrs M provided showed she could afford to make the payments she was committed to making. And while this may have created a '*strong repayment history*' this along wasn't enough for Lending Stream to say that Mrs M would be in a position to afford to take on further borrowing, by carrying out proportionate checks.

However, given Mrs M's pattern of borrowing I think Lending Stream needed to do more. I appreciate it carried out credit checks that didn't show any defaulted or delinquent accounts and I accept that this is a useful tool to determine how *likely* it was that Mrs M would repay her loans – given her previous behaviour. But, by loan 4 – for the reasons I've outlined in my provisional decision, Lending Stream needed to do more which included finding out about his short term credit commitments and then verifying the information Mrs M was providing.

I appreciate Lending Stream says that it wouldn't have asked to see bank statements – this was only one of the ways that Lending Stream could've verified the information Mr H was providing. For example it could've asked for other evidence of his income and his outgoings. And to the best of my knowledge there is nothing in the Data Protection Act which says that a lender can't ask for information – such as bank statements from its customers.

While I can see from the account notes Lending Stream did offer support and help to Mrs M. But I don't think – in relation to what it knew that when approving the loans it took this into account. So although when it was aware of her difficulties and it assisted her by putting her on a repayment holiday. I think lending Stream needed to take this into account, along with the other information it knew about Mrs M when considering the checks it carried out.

While I appreciate that Lending Stream has offered to waive the interest and charges applied to the final loan. Having reviewed the complaint again, I'm still of the opinion it shouldn't have given Mrs M loan 4.

So having considered the additional information Lending Stream has given us as well as the offer it has made, and everything I saw before making my provisional decision, I still think Lending Stream was wrong to have given Mr H some of the loans.

this is what Lending Stream should do to put things right

To put things right for Mrs M, Lending Stream should:

- refund all the interest and charges paid by Mrs M on loan 4,
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- remove all the interest and charges added to loan 5,
- Lending Stream can then use any refund due to reduce the outstanding balance remaining on the final loan,
- remove any adverse information recorded on Mrs M's credit file about these loans.

†HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

If after the refund Mrs M still owes Lending Stream an outstanding balance, than it should try and arrange a mutually agreeable repayable plan with her. But I'd remind Lending Stream of its obligations to treat Mrs M positively and sympathetically.

my final decision

For the reasons given above and in my provisional decision, I partly uphold Mrs M's complaint.

Lending Stream LLC should put things right for Mrs M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 March 2018.

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION**complaint**

Mrs M has complained about the instatement loans she's taken with Lending Stream LLC (Lending Stream) between June 2016 and April 2017. Mrs M says the loans weren't affordable and Lending Stream didn't carry out proper affordability checks.

background

A summary of Mrs M's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date
1	£600.00	15/06/2016	04/10/2016
2	£300.00	31/07/2016	29/10/2016
3	£700.00	30/12/2016	04/02/2017
4	£400.00	13/02/2017	05/04/2017
5	£700.00	07/04/2017	outstanding balance

Mrs M had some problems repaying her final loan – and based on the statement of account Lending Stream has provided it doesn't look like Mrs M has made any payments towards the outstanding balance.

Mrs M complained to Lending Stream and in its response it says that it didn't do anything wrong in giving her the loans. But as a gesture of goodwill, it would remove all the interest and charges from the final loan – leaving only the principal outstanding. Mrs M wasn't happy with the offer so brought the complaint to our service.

Our adjudicator reviewed the complaint and she thought the checks Lending Stream carried out before it agreed to the first 4 loans were sufficient, taking into account the amounts she was committed to repaying compared to her declared disposable income. So the adjudicator didn't think it was wrong of Lending Stream to have given Mrs M these loans.

But by loan 5 the adjudicator felt that due to the frequent nature of her borrowing that it should've carried out a full financial review of her situation – which may have included reviewing her bank statements. And had Lending Stream carried out sufficient checks it would've likely been aware of a number of other instalment loans which wouldn't have left her with enough disposable income to afford the largest repayment she was committed to making.

The adjudicator felt the offer to waive all interest and charges on the last loan was fair, but in addition Lending Stream should also remove any adverse information it has recorded on her credit file about this loan.

Lending Stream didn't agree with the adjudicator's assessment, in response it made a number of points, including;

- For the final loan Mrs M declared enough disposable income for Lending Stream to believe she could repay her loan,
- Mrs M's creditworthiness was assessed before loan – and the information it saw suggested that she had no default or delinquent markers and
- Lending Stream wouldn't have asked to see Mrs M's bank statements.

Lending Stream says that the loan was lent responsibly (loan 5) so it wouldn't be in a position to remove any negative information from Mrs M's credit file. But it reiterated the offer still remained and it also offered to set up a repayment plan to help Mrs M reduce her balance.

No agreement could be reached so the case has been passed to me for a final 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. And having do, I'm intending to partly uphold Mrs M complaint. I've explained my reasons below.

All of the loans Lending Stream gave Mrs M were instalment loans. So this means, the checks Lending Stream needed to carry out, had to show that Mrs M could sustainably afford to repay the instalment as and when they became due – without it impacting on her financial position.

Lending Stream had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules don't set out what checks must be done before lending is approved – but this is a customer focused test. However, Lending Stream needed to conduct enough checks to make sure the loan was affordable for Mrs M. And these checks needed to be proportionate to a number of things, such as the size of the loan and when the loan was due to be repaid.

But even the checks Lending Stream carried out weren't proportionate, that alone doesn't mean Mrs M's complaint should be upheld. I say this because, it's possible, that had further checks been carried out by Lending Stream they would've shown that Mrs M was able to afford the loans. So Lending Stream wouldn't have been wrong to lend her the money.

Lending Stream says it carried out a number of credit and affordability checks before it agreed to lend to Mrs M. It says on each occasion, it carried out a credit check and its decision to lend was based on Mrs M's score as well as the income and expenditure information she provided. And Lending Stream says that based on the information it had gathered about Mrs M it was reasonable to lend to her.

Mrs W took out her first two loans with Lending Stream in June and July 2016 for £600 and £300 respectively. Lending Stream says it carried out proportionate checks for both loans by completing a credit check, as well as asking Mrs M about her regular income and expenditure. And I think these checks went far enough and I've explained why below.

Lending Stream has shown us that Mrs M declared her income to be £2,500 when she applied for the first loan and £2,200 when she applied for the second loan. Her outgoings remained broadly similar at £478 and £528. And taking into account the repayments that needed to be made for both loans Lending Stream would've most likely seen that she had enough disposable income to meet the repayments she was committed to making. So I won't be making an award for these loans.

However, based on the account notes Lending Stream has provided it seems that Mrs M had some difficulties repaying these loans. Before these loans were repaid Mrs M had been in contact with Lending Stream to ask whether she could make the remaining payments weekly, rather than monthly. And Lending Stream appear to have been aware by the beginning of October 2016 that Mrs M was no longer employed – at which point Lending Stream put Mrs M on a repayment holiday. And I can see Mrs M managed to repay both her loans by the end of October and it seems that within a day or so of loan 2 being repaid she applied for another which Lending Stream declined. So I think at this time its reasonable to say that Lending Stream was aware of some financial difficulties that Mrs M was having.

Mrs M then doesn't borrow again until December 2016. When Mrs M applied for loan 3, her outgoings are broadly the same as what she declared for previous loans but her income had again dropped to £2,000. This was Mrs M's largest loan to date and higher largest contractual repayment was £296.80. This lower income could've been reflected in the fact that Lending Stream was aware that Mrs M had recently lost her job.

Given the recently declined loan, the fact that Mrs M's income decreased on each loan and this was her largest loan to date, means I think that Lending Stream's checks needed to go further than just asking about her income and expenditure. I think by now, it would've been proportionate to have asked whether Mrs M had any outstanding short term loan commitments.

In order to understand what if any short term credit commitments Mrs M had at the time, I've reviewed her bank statements. But I still think Lending Stream was entitled to rely on the income and expenditure information Mrs M had provided it.

Having looked at her bank statements, I can see that Mrs M had some outstanding instalment loans with a couple of other lenders, but given the repayments Mrs M was committed to making to these lenders. I think that had Lending Stream carried out proportionate checks it would've likely seen that Mrs M had sufficient disposable income to be able to afford the repayments she was committed to making. So I don't think it was wrong of Lending Stream to have given Mrs M this loan.

However, again, according to the notes Lending Stream has provided Mrs M appears to have had had some problems repaying this loan and it seems that she was on a payment arrangement, because at the end of January 2017 Mrs M called Lending Stream to re-schedule the payment arrangement.

Mrs M's fourth loan was taken out around 9 days after loan 3 was repaid. And given her borrowing history, and what Lending Stream knew about her financial situation, I think by now, it should've been concerned about Mrs M's financial situation. So checking her creditworthiness and asking for disposable income was no longer sufficient. By now, Lending Stream should've had a full understanding of Mrs M's financial situation which should've included verifying the information she had provided.

I appreciate Lending Stream says it wouldn't have asked for bank statements. But this was just one of the ways Lending Stream could've verified the information Mrs M was providing. For examples it could've asked to see evidence of her income and her outgoings. Or as I've done here, it could've asked to see her bank statements. Mrs M's bank statements are the best indication of her ability to repay the loan at the time, so I don't think it's unreasonable to rely on them.

Had Lending Stream verified the information it was being given, it would've likely seen that the income Mrs M declared was broadly correct at the time this loan was approved. It also would've seen that Mrs M's living costs were significantly higher than she had declared – at around £1,300 per month. And based on the contractual repayments Mrs M would need to pay – her largest monthly amount being £143.36 it appears the loan may have been affordable. But had Lending Stream had a full understanding of Mrs M's financial situation it would've seen that she was repaying a number of payday loans at the time, in the weeks leading up to the loan being approved Mrs M had repaid over £550 to other short term creditors. So had Lending Stream carried out proportionate checks I think it would've seen that Mrs M didn't have enough disposable income to afford the repayments she was committed to making so it wouldn't have given her loan 4.

Like the loan above, I don't think the checks carried out by Lending Stream before agreeing to the last loan went far enough. It was aware of a recent declined top up and again Mrs M's income had decreased again, and was again £200 lower than her previous loan and her outgoings had stayed broadly the same. So for these reasons I think Lending Stream's checks needed to go further.

Again, proportionate checks would've shown that Mrs M's income was broadly correct – and it would've seen similar outgoings of around £1,300 per month. But, at the time this loan was approved, Mrs M had over £460 of outstanding short term loan commitments – and these sums needed to be repaid. And Mrs M's largest repayment to Lending Stream was scheduled to be £324.80.

So taking into account, her declared income, her outstanding payday commitments and the commitment she had with Lending Stream she didn't have enough disposable income to be able to afford the repayments that Mrs M was committed to making. And as a responsible lender Lending Stream wouldn't have given Mrs M loan 5.