

complaint

Mr S has complained about instatement loans he's taken with Lending Stream LLC (Lending Stream) between April 2011 and February 2013. Mr S says the loans weren't affordable so shouldn't have been given to him.

background

Mr S had a total of 10 loans and a summary of Mr S's borrowing history can be found below.

loan number	loan amount	received date	actual repayment date
1	£495.00	07/04/2011	16/09/2011
2	£95.00	24/06/2011	14/10/2011
3	£355.00	22/09/2011	17/02/2012
4	£135.00	24/11/2011	12/04/2012
5	£185.00	17/01/2012	07/03/2012
6	£615.00	02/09/2012	22/09/2012
7	£615.00	03/11/2012	12/04/2013
8	£345.00	03/12/2012	10/05/2013
9	£125.00	31/12/2012	14/03/2013
10	£565.00	20/02/2013	25/06/2013

Our adjudicator reviewed Mr S's complaint and thought the checks carried out before agreeing to the first two loans went far enough. So he didn't think it was wrong of Lending Stream to have given Mr S these loans.

However, he didn't think that any of the checks on the remaining loans went far enough. Taking into account the borrowing history before loans 3 and 4 were approved Lending Stream should've gathered some further information from Mr S about any outstanding short term credit commitments. And for all remaining loans, the adjudicator felt that Lending Stream should've had a full understanding of Mr S's financial position.

And the adjudicator could see that proportionate checks would've shown Lending Stream that Mr S was borrowing from a number of other short term lenders which didn't leave him any disposable income in order to repay the loans he'd taken from Lending Stream. So the adjudicator recommended that Mr S's complaint should be partly upheld in respect of loans 3 – 10.

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

- the loans were affordable to Mr S based on his declared income,
- having multiple loans running at the same time shouldn't be considered as irresponsible when Mr S could afford the loans,
- Mr S's credit score was factored into Lending Stream's underwriting process,
- Mr S was required to declared all of his expenses at the time the loans were approved and
- Lending Stream wouldn't have asked to see Mr S's bank statements.

But in order to resolve this complaint Lending Stream agreed to refund the interest and charges (as well as paying 8% simple interest on the refunded interest as well as removing any adverse information about these loans from Mr S's credit file). This offer applied to loans 3, 6, 7 and 10. Mr S didn't accept Lending Stream's offer.

The case has now been passed to me for consideration, but as Lending Stream has already agreed to refund the loans listed above, I won't be making a finding on these loans in this decision.

my 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 carefully thought about everything I've been given and having done so, I'm partly upholding Mr S's complaint and I'll explain why below.

All of the loans Lending Stream gave Mr S were instalment loans. So this means, the checks Lending Stream needed to carry out, had to show that Mr S could sustainably afford to repay the instalments as and when they became due – without it impacting on his 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 Mr S. 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 if the checks Lending Stream carried out weren't proportionate, that alone doesn't mean Mr S'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 Mr S was able to afford the loans. So Lending Stream wouldn't have been wrong to lend him the money.

Lending Stream says it carried out a number of credit and affordability checks before it agreed to lend to Mr S. It says on each occasion, it carried out a credit check and its decision to lend was based on the credit check results as well as the income and expenditure information he provided.

Lending Stream says that based on the information it gathered about Mr S, it was reasonable to lend to him because its assessment showed he could afford the loan repayments and it didn't see anything in the results of the credit search to make it think that Mr S would have problems repaying the loans.

But I've thought about what Lending Stream says and Mr S's circumstances at the time each loan was approved. And having done so, I don't think the checks Lending Stream carried out were proportionate for some of the borrowing.

Mr S took out loans one and two with Lending Stream in April and June 2011 for £495 and £95 respectively. Lending Stream says it carried out proportionate checks for these loans by completing a credit check, as well as asking Mr S about his regular income and expenditure. It has provided a record of the figures it took from Mr S at the time each loan was approved.

Lending Stream has shown us that Mr S declared his income to be £1,600 when he applied for the first loan and £1,500 for the second loan as well as taking details of his outgoings – which Mr S declared this to be £800 for both loans. But taking into account the repayments he was committed to making to Lending Stream as well as the commitments Mr S had declared. Lending Stream would've most likely have seen that he had enough disposable income to meet his repayments. So I don't think it was wrong of Lending Stream to have given Mr S these loans.

Lending Stream has already agreed to settle Mr S's third line in line with our approach – had we upheld the complaint. So I won't be looking this loan here.

Mr S's fourth was taken out while his third loan was still running. By this loan both his income (£1,800) and his outgoings (£1,200) had increased and Lending Stream would've seen that Mr S had around £600 of disposable income. However, as Mr S's third loan was still outstanding, the largest repayment he was due to make to Lending Stream was £187.85.

But having considered Mr S's outstanding loan repayments as well as the number of loans he'd taken, I think Lending Stream's checks needed to go further and it should've had an up to date picture of his finances. So I think it should've gathered some further information from Mr S about any outstanding short term credit commitments he may have had.

I've looked at Mr S's bank statements to find out what, if any outstanding short term credit commitments he had at the time. Mr S told Lending Stream his outgoings were £1,200 and I can see from the bank statements that Mr S did have some outstanding payday loan with other lenders of over £1,100. And taking into account the repayments Mr S was committed to making for his fourth loan Lending Stream would've likely seen Mr S didn't have enough disposable income to be able to meet his commitments. Therefore, Lending Stream shouldn't have given Mr S this loan.

Mr S's fifth loan was taken out while his third and fourth were still outstanding. But having thought about the number of loans Mr S had taken along with his loan history, I don't think Lending Stream's checks went far enough. Mr S gave Lending Stream details of his expenditure and the figure for this loan was £1,000 and his income had dropped to £1,500. And this, along with Mr S's frequent borrowing should've prompted Lending Stream to carry out further checks because I think it should've been concerned about Mr S's dependency on these loans.

So taking the above into account, I think by now Lending Stream needed to have a thorough understanding of Mr S's financial position – which would've included verifying the information he was providing. I appreciate what Lending Stream says about not gathering bank statements – but this was just one of the ways it could've verified the information it had been given. For example, it could've asked for evidence of Mr S's income and his outgoings. But, I've used Mr S's bank statements as I've got these to hand.

I don't think it's unreasonable to use Mr S's because they are the best indication I have of Mr S's ability to afford the loan at the time it was approved, so I don't think it's unreasonable to rely on the bank statements.

Having looked at Mr S's bank statements, I don't think he had the ability to repay this loan. While the monthly income Lending Stream has recorded is broadly correct it's clear from the statements that Mr S was borrowing from other payday lenders – and at the point this loan was approved, Mr S already owed other short term lenders over £800. And taking into

account his living costs and regular financial commitments – as well as the payments he was committed to making to Lending Stream for his three outstanding loans (£211.93). Mr S didn't have enough disposable income to be able to afford his repayments to Lending Stream. And I think that had Lending Stream undertaken proportionate checks this would've been brought to its attention and it wouldn't have lent to Mr S because it would've likely seen that Mr S wasn't in a position to sustainably repay his loan.

For all remaining loans that I'm looking at, I don't think the checks carried out by Lending Stream went far enough. Mr S continued to borrow from Lending Stream and at times had up to 4 outstanding loans. And at times, Mr S would also borrow from Lending Stream more than once a month – such as December 2012. And this could've been a sign that Mr S was using these loans to supplement his living costs. And Lending Stream ought to have already been aware that Mr S was borrowing from a number of other short term lenders. So, I still think Lending Stream should've been verifying the information he was providing, for the same reasons that I've outlined above.

I've reviewed Mr S's financial position throughout the remainder of his borrowing and I don't think he was in a position to take on any of the loans because I can see that Mr S's financial position doesn't change after his fifth loan. The income he declared to Lending Stream is again broadly correct. But, he continued to borrow from other short term lenders and he still had his normal living costs and regular financial commitments to meet as well. Had Lending Stream carried out proportionate checks its likely it would've seen that before loan 8 was approved, he had recently repaid other lenders over £1,650 and by the time loan 9 Mr S owed other short term lenders over £1,300.

So if Lending Stream had carried out proportionate checks, it's likely to have seen Mr S wasn't in a position to repay any of these loans sustainably. And as a responsible lender, it shouldn't have approved these loans, once it realised this.

what Lending Stream should do to put things right

To put things right for Mr S, Lending Stream should in addition to what it has already agreed to do:

- refund all the interest and charges paid by Mr S on loans 3 - 10 ,
- 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 any adverse information recorded on Mr S's credit file about these loans.

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

my final decision

For the reasons given above, I partly uphold Mr S's complaint.

Lending Stream LLC should put things right for Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 January 2018.

Robert Walker
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