

complaint

Miss C complains that Lending Stream LLC gave her loans that she couldn't afford to repay.

background

The background to this complaint was set out in my provisional decision dated November 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 uphold part of the complaint. I invited both parties to let us have any further comments and evidence. Both Miss C and Lending Stream have provided us with some comments.

Miss C has expressed her disappointment that my provisional decision differed from the outcome recommended by our adjudicator. She felt that her complaint about the early loans should also have been upheld since they placed her into a difficult financial position and added to issues she was facing as a result of a gambling problem.

Lending Stream said that it still believes it was fair to give loan 5 to Miss C based on the information she'd provided about her normal disposable income. It says Miss C didn't give any details of a gambling problem at the time, and if she had the lender would have assisted her in clearing the debt.

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.

I understand how disappointing my decision is for Miss C. And I have thought about her situation very carefully. I have no doubts about the financial problems Miss C was facing at the time. And that these financial problems were such that she couldn't actually afford to repay any of the loans. But, I think that Lending Stream was entitled to rely on the information she provided about her finances for the first four loans. And that information would have led Lending Stream, even taking account of her other short term borrowing, to reasonably conclude those loans were affordable.

But I think that changed by the time of loan 5. By that stage, although Miss C was still providing Lending Stream with information that suggested the loans were affordable, I think Lending Stream should have done further checks. I don't think it was reasonable by that point to rely on Miss C providing accurate information about her finances. And I think if Lending Stream had checked what Miss C was saying it would have seen the true extent of her financial problems.

So I think by that time it should have been clear to Lending Stream that Miss C wasn't able to sustainably afford to take on any additional borrowing. As a responsible lender, I don't think Lending Stream would have agreed to give Miss C the fifth loan. So I still think Lending Stream needs to pay Miss C some compensation in relation to that loan.

putting things right

I don't think Lending Stream should have agreed to lend to Miss C on 18 February 2017 (loan 5). So for that loan Lending Stream should;

- Refund any interest and charges applied to the loan.
- 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 Miss C's credit file in relation to the loan.

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

my final decision

For the reasons given above, and in my provisional decision, my final decision is that I partly uphold Miss C's complaint and direct Lending Stream LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 March 2018.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION**complaint**

Miss C complains that Lending Stream LLC gave her loans that she couldn't afford to repay.

background

Miss C was given five loans by Lending Stream between August 2016 and February 2017. Each of her loans was repayable in six monthly instalments. And although it appears Miss C made one of her repayments on the first loan a day late, and so incurred some additional charges, all her loans were ultimately repaid before their due date. A summary of Miss C's borrowing from Lending Stream is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	18/08/2016	07/12/2016	£ 200
2	03/10/2016	07/12/2016	£ 250
3	19/11/2016	07/12/2016	£ 320
4	08/12/2016	09/05/2017	£ 640
5	18/02/2017	09/05/2017	£ 90

Miss C's complaint has been assessed by one of our adjudicators. He thought that the checks Lending Stream had done before the first loan had been sufficient. But he thought Lending Stream should have done better checks before the rest of Miss C's loans were agreed. And he thought that better checks would have shown Lending Stream that Miss C couldn't afford to repay loans 3 to 5. So he asked Lending Stream to pay Miss C some compensation.

Lending Stream didn't agree with that assessment so the complaint has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Miss C accepts my decision it is legally binding on both parties.

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 Miss C could afford to pay back each loan before it lent to her. Those checks needed to be proportionate to things such as the amount Miss C was borrowing, and her lending history, but there was no set list of checks Lending Stream had to do.

The Financial Conduct Authority was the regulator at the time Miss C borrowed from Lending Stream. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations require lenders to take *"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."* - CONC 5.3.1(2). CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the interest paid might have been low in comparison with Miss C's income, or that she managed to repay the loans in full and on time, doesn't necessarily mean the loans were affordable for her and that she managed to repay them in a *sustainable manner*. In other words I can't assume that because Miss C managed to repay her loans that she was able to do so out of her normal means without having to borrow further.

Lending Stream has told us about the checks it did before lending to Miss C. It asked her about her normal income, and monthly expenditure. And it checked her credit score before giving her each loan. As I said earlier, each of the loans was repayable in six monthly instalments. So that means that the repayments Miss C needed to make each month were smaller than if she had just taken a normal payday loan. But of course she was also committing to making those repayments over a far longer period.

I think that the checks Lending Stream did before giving Miss C the first two loans were sufficient. The amounts she needed to repay on each were relatively modest compared to what she told Lending Stream about her disposable income.

I have considered that Miss C was late making one of her repayments on the first loan – but given she resolved this the following day, I think it would be reasonable for Lending Stream to have concluded this was an administration error rather than an indication that Miss C was facing any financial problems. And I've also thought about the fact that Miss C had two loans open at the same time. But on balance I don't think either of these factors is enough to make me think Lending Stream needed to do more checks than it did. So I don't think Lending Stream did anything wrong in agreeing the first two loans.

When Miss C asked for her third loan, she was still repaying both of her first two loans. And this was the largest loan request Miss C had made so far. So I think Lending Stream should have had some concerns about whether the information it had gathered gave it enough of an insight into Miss C's true financial position. I think it would have been proportionate at this time to have gathered some additional information, such as asking Miss C about any other short term loans she had outstanding.

Miss C then repaid her first three loans at the same time. But the following day she asked to take another loan. And the amount she asked to borrow was double the highest loan she'd taken previously. Although the repayment she now needed to make was less than the combined repayments on her first three loans, I again think this request should have caused some concern to Lending Stream. As for loan three I think it would have been proportionate to have gathered some additional information, such as asking Miss C about any other short term loans she was due to repay around that time.

Although the amount Miss C asked for when she took her fifth loan was much smaller she had only just begun repaying her fourth, and largest, loan. And this was now her fifth request in the space of around six months. I think by this time it wasn't reasonable for Lending Stream to rely solely on the information that was being provided by Miss C. I think it would have been proportionate for Lending Stream to have independently verified the information Miss C was providing.

But although I don't think the checks Lending Stream did from loan 3 onwards were sufficient, that in itself doesn't mean that Miss C's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Lending Stream that Miss C couldn't sustainably afford the loans. So I've looked at Miss C's bank statements, and what she's told us about her financial situation, to see what better checks would have shown Lending Stream.

At the time of loans three and four I still think it was reasonable for Lending Stream to take account of the information that Miss C had provided about her disposable income. At those times she told Lending Stream that she had more than £1,200 left over each month. But I can see from Miss C's bank statements that she was borrowing heavily from other short term lenders at the same time. And I think this is something that Lending Stream should have asked her about and taken into consideration.

At the time of loan three it appears that Miss C owed just under £700 to other short term lenders. But even after repaying that, from the information she'd given to Lending Stream about her disposable income, she'd still have been able to afford the combined repayments on loans 1 to 3. So I don't currently think better checks would have suggested to Lending Stream that Miss C couldn't afford to repay this loan.

I think the same sort of checks would have been proportionate for loan 4. It appears that Miss C owed less to other short term lenders at that time – her outstanding repayments were around £400. And the amount she needed to repay on loan 4 was a little bit less than the combined repayments of her previous three loans. So once more I currently think that better checks would have suggested to Lending Stream that Miss C could afford this loan too.

But I don't think that's the case for the final loan. If Lending Stream had verified the information Miss C was providing it would have seen that her normal expenditure was actually much higher. It would have seen that she was still borrowing from other short term lenders. And it would have seen that Miss C was making a large number of payments to what appear to be gambling websites.

From all this information I think it would have been clear to Lending Stream that Miss C wasn't able to sustainably afford to take on any additional borrowing. As a responsible lender, I don't think Lending Stream would have agreed to give Miss C the fifth loan. So I currently think Lending Stream needs to pay Miss C some compensation for that lending decision.