

complaint

Mr F complains about Lending Stream LLC providing him with 47 loans over an almost four year period. He says he couldn't afford the loans and this should've been clear to Lending Stream when considering the loans.

Mr F would like Lending Stream to refund the interest and any charges he's paid on the loans.

background

The circumstances of this complaint and my initial conclusions were set out in my provisional decision of 31 October 2016. A copy of the provisional decision is attached here and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld and what I thought Lending Stream should do to put things right. I invited further comments from both parties before reconsidering the complaint.

Mr F accepted my provisional findings. Lending Stream did not. In summary, it said it still believes the loans were affordable to Mr F and has again referred to the income and expenditure figures provided at the time. It again refers to Mr F's credit score being good and doesn't agree that that credit checks are not an indication of affordability.

Lending Stream says it never asks for consumer's bank statements because of data protection and documents such as bank statements are only required if additional application checks are required. It doesn't believe that lending multiple loans should be considered irresponsible lending or unaffordable if the consumer's income is higher than their expenditure.

Lending Stream accepts that a consumer having ample disposable income should ideally not require them to borrow month after month. But it again refers to Mr F being able to afford the loans and it considers he was relying on credit to fulfil his short term needs. Lending Stream also refers to 12 declined loan applications as they did not meet its criteria. It believes this demonstrates careful consideration of each application was done.

Finally, it is willing to maintain its original offer of resolution and it believes it has acted responsibly in approving the loans fairly.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same overall conclusions as set out in my provisional decision, for what are essentially the same reasons.

I'm grateful for Lending Stream's detailed response to my provisional decision but it doesn't however alter my view of the complaint or the conclusions I've reached. I won't refer to each point Lending Stream has raised but there are some significant points that I will address to try and clarify things further.

Lending Stream has referred to the income and expenditure information provided by Mr F and maintains that this shows the loans were affordable to him. As referred to in my provisional decision, both the OFT and FCA clearly state that a lender is able to rely on the information that an applicant provides about their circumstances when applying for a loan. But, it's also clearly stated that a lender can only rely upon the information provided if there is nothing else that suggests the information provided by the applicant may be incorrect.

The lending here is short term and high costs and is intended for short term cash flow problems. The number of loans granted to Mr F means he's borrowing repeatedly and this has gone on over a significant number of months. I still believe that this should have alerted Lending Stream to the possibility of Mr F being dependant on the lending to maintain his regular expenditure. This should therefore have prompted Lending Stream to look more closely at Mr F's circumstances and the information he was providing. I don't think it's responsible to simply lend repeatedly month after month without any consideration to whether a consumer has become reliant on the lending.

Had Lending Stream made further enquiries with Mr F and it was clear that he could afford the lending each month then I accept it's for a consumer to decide whether they wish to use this type of lending. However, it should have been clear to Lending Stream if it did make further enquiries with Mr F that he couldn't actually afford to repay the loans and that the information he's provided wasn't accurate.

Lending Stream has referred to the credit checks it carried out and that it considers a credit check to be an indicator to evaluate if a loan is affordable. I agree that a credit check is a valuable tool to use when considering a loan application. The check will show what a consumer has previously borrowed and repaid, along with other factors such as overall indebtedness. However, in isolation it doesn't conclusively tell a lender that a loan is actually affordable. The fact that a consumer has previously repaid credit suggests he's *likely* to repay any future borrowing but this again is not conclusive in every case that the loan is affordable.

I again accept a credit check is a useful tool to use when assessing affordability but it should still be considered alongside the other information the lender knows about the customer. In the specific circumstances here I again reiterate that Mr F had 47 loans with Lending Stream. The very high number of loans granted is a significant factor here and I still maintain that it should have alerted Lending Stream to a possible dependency or reliance on high cost short term credit. And, had it made more appropriate checks it should have realised that Mr F couldn't actually afford to repay the loans, despite what may have been provided about his income and expenditure.

Lending Stream has referred to declining 12 loan applications from Mr F and it believes it shows each loan application receives careful consideration. I accept it does show that not all loans are accepted when applied for but declining some applications doesn't however demonstrate all other granted loans were actually affordable.

Finally, Lending Stream has asked that I evaluate the situation here from 'a business perspective as well' to reach a fair decision. I have considered this complaint from an impartial perspective and amongst other things, having regard to the law, regulation and industry good practice. I have considered the nature of the product here, which is a short term loan, intended to be provided quickly and easily for customers. But I've also considered what the OFT and FCA set out about responsible lending and the requirements or expectations a lender has.

It is clear to me that Lending Stream has not done sufficient checks when considering to lend to Mr F and that it should have realised that further checks were required because of the significant number and pattern of borrowing. Had it looked more closely at Mr F's circumstances it should have easily realised he couldn't actually afford all of the loans and it should have declined the applications. I am somewhat surprised that even after my provisional decision Lending Stream still considers it has acted reasonably.

For the reasons set out here I still consider Mr F's complaint should be upheld. To resolve the complaint I think it fair that Lending Stream now refund all of the interest, and any charges, applied to all loans taken out in and after November 2013.

Lending Stream should also add interest at 8% simple per year to each of the refunded amounts from the date of each payment until the date of settlement.

my final decision

My final decision is that I uphold Mr F's complaint and I direct Lending Stream LLC to pay Mr F redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 January 2017.

Mark Hollands
ombudsman

Copy of Provisional Decision

complaint

Mr F complains about Lending Stream LLC providing him with 47 loans over an almost four year period. He says he couldn't afford the loans and this should've been clear to Lending Stream when considering the loans.

Mr F would like Lending Stream to refund the interest and any charges he's paid on the loans.

background

Lending Stream has told us that Mr F has taken out, and repaid, 47 short term loans over a near four year period. The loans varied in amounts and ranged from anything up to £880. The average amount of the loans was in the region of £260.

The loans were all repaid and Lending Stream says some of the loans were repaid early. It says it assessed Mr F's circumstances at the time of each application and based upon what it knew, it was satisfied Mr F could afford to repay the loans.

After complaining to Lending Stream Mr F referred his complaint to us. One of our adjudicators considered what both parties said and provided and was initially minded to uphold part of the complaint. After further consideration, the adjudicator decided not to uphold the complaint.

Mr F was unhappy about this and believes Lending Stream should've clearly seen that he was not in a position to afford to repay the loans without further borrowing. Mr F asked for the complaint to be reconsidered, so it's been referred to me for review.

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. Having done so, and based upon what I've seen so far, I'm minded to uphold this complaint and direct Lending Stream to refund the interest charged on some of the loans.

Mr F first approached Lending Stream in 2012 and took out a loan for £200. It's not clear if this loan was actually taken out as it is shown as 'withdrawn', which I understand means it may not have actually been provided. It's clear the next loan was taken out July 2013 and this was for £160. This was repaid and a further loan of £200 was taken out in August 2013. This was again repaid and in September a £500 loan was taken.

I don't consider it necessary to list all of the dates and amounts of each of the 47 loans Lending Stream says Mr F took out but in summary, loans were regularly taken out up to April 2016. The loan amounts averaged £260 and were up to £880. In six of the months up to April 2016 Mr F took 3 loans in each month and in June 2015 Mr F took out 5 loans.

When deciding to lend Lending Stream is required to ensure that Mr F can afford to repay each loan in a sustainable way, which means without taking out further loans to make the repayments. Lending Stream is required to carry out a check of Mr F's circumstances and this is set out in the Office of Fair Trading (OFT) guidance and the Financial Conduct Authority's (FCA) consumer credit sourcebook. Neither the OFT or FCA say what a business should do in every case but they both suggest a number of things a lender may wish to check when assessing affordability. Any checks should be proportionate and will depend on the specific circumstances of each case. The overriding principle of the both the OFT guidance and FCA rules is that the loan should be affordable.

Lending Stream says it carried out sufficient checks when deciding to lend to Mr F and its '*robust underwriting system...considered multiple factors*'. It says that Mr F was employed full time and the income recorded ranged between £1,800 and £2,200, with sufficient disposable income to meet the amounts due on each loan. It says it also carried out credit checks and Mr F's credit score ranged from 717 to 831. Lending Stream doesn't believe any of the loans were irresponsibly lent.

Both the OFT and FCA clearly state that a lender is able to rely on the information that an applicant provides about their circumstances when applying for a loan. In this case, that Mr F declared a disposable income that was more than sufficient to meet the cost of every loan was something that Lending Stream was entitled to rely upon.

However, it is very clearly stated by the OFT and FCA that a lender can only rely upon the information provided if there is nothing else that suggests that the information provided by the applicant may be incorrect. The income and expenditure that Mr F provided on each loan application does not in isolation appear unusual or particularly concerning to a lender. But in my view, a responsible lender would have realised after a number of loans had been taken out that someone with such an ample disposable income should not need to take out loan after loan, month after month. The sort of lending here is intended for short terms and is not designed to be used repeatedly over an almost 4 year period.

I also appreciate that Mr F repaid each of the loans and some of these were repaid before the due date. However, repaying a loan is not an indication on its own that the loan was actually affordable. A consumer may be able to afford to repay the loan on the day they get paid but if this then leaves them with no other funds to meet their normal existing monthly commitments this is not in any way sustainable lending.

I've also considered what both parties have said about the credit checks. Lending Stream says it carried out regular checks and Mr F's credit score was between 737 and 831. Mr F says that he had a county court judgement that wasn't settled until 2013, plus 2 additional defaults. Mr F believes his credit score would not have been anywhere near as high as what Lending Stream says it was.

I haven't seen exactly what the credit checks showed each time Lending Stream did a check and I can't be sure whether the score was or wasn't as high as Lending Stream says. I've also not seen a full copy of Mr F's credit file showing what his 'score' would have been at the time of each application, or if the court judgement and defaults were showing. I have seen part of a credit report that Mr F provided but I don't however consider the credit file is the ultimate deciding factor in this case.

Lending Stream should have realised that it was quite likely that Mr F didn't have the disposable income that he declared and it was unreasonable therefore for Lending Stream to simply rely upon that as an accurate reflection of his circumstances. Had his disposable income been what was recorded I think it's clearly unlikely that Mr F would have needed to borrow 47 times from Lending Stream.

Mr F did repay the loans but this again does not show the loans were affordable, and I'll refer to this again later. Lending Stream relied upon a credit check and although I can't be sure what this would have shown, a credit check isn't an indication of whether a loan is actually affordable. It will give an indication of the existing and previous lending and whether this was repaid. It doesn't however conclusively show someone can afford to take out additional borrowing.

Having considered all that's been provided by the parties here I'm not persuaded it was reasonable for Lending Stream to lend to Mr F on 47 occasions. Lending Stream should, in my view, have realised that it was quite likely that Mr F's circumstances weren't as good as it was led to believe and there was a strong chance that he could not actually afford some of the loans he took out. While I'm satisfied that Lending Stream carried out proportionate checks when it first began to lend to Mr F, the level of 'proportionality' would change once Mr F had taken a number of loans over a short period of time. As more loans were taken I would have expected Lending Stream to have carried out more substantial checks to assess Mr F's circumstances.

Looking at the number of loans here, the amounts and when they were taken out I think that by the time Mr F applied for the £300 loan in November 2013 Lending Stream should have increased the level of checks it did rather than simply relying on what Mr F had provided. By this time it had already lent to Mr F 4 times (possibly 3 if the first loan in 2012 wasn't actually taken out). And the previous 3 loans had been taken month after month in July, August and September 2013.

Had Lending Stream increased the checks it carried out I think it would have been reasonable at that point to seek further supporting evidence of Mr F's income and expenditure. Had Lending Stream asked to see Mr F's bank statements, for example, it would have seen that around that time Mr F had already established a regular relationship with a number of payday lenders and that he was regularly spending considerable sums on gambling. In one month Mr F spent over £1,000 on gambling alone, in addition to a number of other more expected expenses.

It would not have been excessive for Lending Stream to have asked to see Mr F's bank statements and had it done so it would have seen the other payday lending and gambling, in addition to more expected expenses. Lending Stream should have then realised that Mr F was not in a position to repay the loans in a sustainable manner. Lending Stream should therefore have declined the loan taken out on 3 November 2013.

Mr F's circumstances didn't improve throughout the rest of his relationship with Lending Stream and his bank statements show he continued to borrow from other payday lenders and gamble. At no point did Lending Stream increase the checks it carried out when Mr F applied for more borrowing, not even when he took out 5 loans in one month. Looking at the circumstances here after November 2013 I don't think that Lending Stream should have lent any of the loans to Mr F and had it done appropriate checks it should have established for itself Mr F should not have been lent to.

Had Lending Stream not agreed to lend to Mr F in November 2013 Mr F would not have needed to pay the considerable sums of interest on the loans. I think it's only reasonable that Mr F doesn't receive a refund of everything he paid to Lending Stream as this will include the capital sums he borrowed. But Lending Stream should refund all of the interest, and any charges, applied to all loans taken out in and after November 2013. Lending Stream should also add interest at 8% simple per year to each of the refunded amounts from the date of each payment until the date of settlement.

my provisional decision

Subject to any further submissions from the parties here, my provisional decision is that I uphold this complaint and Lending Stream LLC should pay Mr F redress as set out above.

Mark Hollands
ombudsman