

complaint

Mr M has complained about seven loans he took out with Lending Stream Llc ("Lending Stream"). He says the loans were unaffordable.

background

Mr M took seven loans from Lending Stream between March 2013 and January 2014. Each of these loans was due to be repaid over a period of six months – but in most cases Mr M repaid the loans within the next month or two. A summary of Mr M's borrowing is shown below.

| Loan Number | Date Borrowed | Date Closed | Amount Borrowed (£) |
|--------------------|----------------------|--------------------|----------------------------|
| 1 | 9/3/13 | 15/3/13 | 415 |
| 2 | 20/5/13 | 29/5/13 | 200 |
| 3 | 16/7/13 | 17/9/13 | 300 |
| 4 | 12/8/13 | 17/9/13 | 700 |
| 5 | 5/10/13 | 1/11/13 | 500 |
| 6 | 2/1/14 | 28/1/14 | 600 |
| 7 | 9/1/14 | 27/6/14 | 400 |

Our adjudicator recommended Mr M's complaint be upheld from the point the fourth loan was taken out in August 2013. He felt that Lending Stream didn't do enough when checking whether it should lend to Mr M at this stage. If it had done, he thought the checks would've shown the loans had become unaffordable.

The adjudicator recommended Lending Stream refund the interest and charges that Mr M paid from 12 August 2013 onwards.

Lending Stream didn't agree, so the complaint has come to me for a 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.

We've explained how we handle complaints about short term lending on our website and I've used this approach to help me decide Mr M's complaint. Having done so, I've decided to uphold Mr M's complaint in part for the same reasons as the adjudicator.

did Lending Stream carry out proportionate checks?

When lending money to a consumer a lender should take proportionate steps to ensure a consumer will be able to repay what they're borrowing in a sustainable manner without it negatively impacting on their financial situation. A lender should gather enough information so that it can make an informed decision on the lending.

The guidance and rules don't set out compulsory checks but they do list a number of things a lender might wish to take into account before agreeing a loan. Any checks should be proportionate and take into account a number of things, such as how much is being lent, how long the borrowing is for and what the lender knows or is told about the borrower's circumstances.

Lending Stream has told us about the checks that it did before lending to Mr M. It has shown us that it asked Mr M about his income and expenditure, and it checked his credit file.

The highest repayment for the first loan was quite small in relation to Mr M's declared monthly income of £3,200; so I think the checks went far enough. Mr M then repaid this loan about a week later.

The second loan was taken almost two months later and for a lower amount. Again, I think the checks went far enough at this stage based on Mr M's declared income of £3,000. The loan was repaid about a week later.

The third loan was taken around six weeks after the second loan was repaid and the highest repayment was again small in relation to Mr M's declared income and expenditure. So I think Lending Stream did enough to check the loan was affordable.

The fourth loan was for a much higher amount and the highest repayment was around £350. Mr M declared income of £3,000 and expenditure of £450. However, when Mr M asked for his fourth loan he had still not repaid his third loan. And this was now the fourth borrowing request that Mr M had made within five months.

The fact that the amounts borrowed and the repayments might have been low in comparison with Mr M's income, or that he managed to repay them in full earlier than the agreement set out, doesn't necessarily mean the loans were affordable for him. Nor does it mean that he managed to repay them in a *sustainable manner*. In other words I can't assume that because Mr M managed to repay his loans that he was able to do so out of his normal means without having to borrow further.

I would also think it unusual for someone with such seemingly a high level of disposable income to be continuously requesting short terms loans. I think this also should have put Lending Stream on notice that it ought to be gathering more information.

The guidance in place at the time was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The Office of Fair Trading (OFT) Irresponsible Lending Guidance states "*Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties.*"

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty.*" And it defines "*undue difficulty*" as being able to repay credit "*while also meeting other debt repayments and normal/reasonable outgoings*" and "*without having to borrow further to meet these repayments*".

So I think it would have been proportionate for Lending Stream to have gathered some more information about Mr M's financial situation before agreeing the fourth loan – perhaps asking him some more specific questions about any other short term lending he was using.

Although loans five to seven were for slightly lower amounts, I think the continuous and persistent nature of the borrowing at this stage should have prompted Lending Stream to do more before agreeing these loans. Any gaps were minimal and were unlikely to be an indication that Mr M's finances were now back on track. I think from the fifth loan onwards, Lending Stream should've carried out a full assessment to satisfy itself of Mr M's financial situation, for example asking for bank statements.

what would proportionate checks most likely shown?

Even though I don't think that the checks Lending Stream carried out were proportionate from the fourth loan onwards, this doesn't, on its own, mean that Mr M's complaint should be upheld. I need to establish if those checks had been done, what they would've shown Lending Stream about Mr M's ability to sustainably repay those loans.

I don't know exactly what proportionate checks would have shown or what Mr M would have declared at the time. Mr M has provided evidence of his financial circumstances from the time in the form of bank statements. And I think this information is the best indication I have of what Mr M's financial circumstances were like at the time.

For loan four, although Lending Stream asked Mr M what his expenditure was, it didn't specifically ask about his other short term lending commitments and I think it should have done. From Mr M's bank statements, I can see he had outstanding loans with four other short term lenders. These were repaid in the weeks after he borrowed fourth loan from Lending Stream. The total outstanding with other lenders at the time Lending Stream agreed the fourth loan was around £2,500.

The £700 Mr M borrowed was due to be repaid over six instalments ranging from £210 to £350. But as I've mentioned above at the time Mr M took loan four, his previous loan was still outstanding. This meant that the total amounts he would have to repay for both loans ranged from around £300 to £500.

Based on this – had Lending Stream enquired further into Mr M's circumstances, I think Lending Stream should have been concerned that Mr M couldn't afford to repay this loan.

For the remaining three loans, Lending Stream should have been satisfying itself of Mr M's full financial situation, for example by looking at statements. If it had, at the time of agreeing loan five it's likely it would have seen:

- His income was around £2,950 which is around what he declared to Lending Stream
- His normal living costs and regular credit commitments were around £800 per month
- He was also borrowing from a number of other short term lenders and had at least three other short term loans outstanding totalling over £1,400
- There were significant gambling transactions with spending of around £5,500 (and net losses of around £2,500) in the previous month
- He had borrowed £4,000 from a friend
- His account was mainly in debit – despite the above loan

According to the agreement for loan five, Mr M had to make six monthly repayments – the highest of which was £270. But I don't think it was responsible to agree this loan given Mr M's circumstances set out above.

At the time of agreeing loan six Mr M's circumstances had not changed significantly in the two months' gap.

- His income was still around £2,950 and expenditure around £800 per month
- He was still borrowing from a number of short term lenders and had around £1,750 outstanding
- The majority of this was on a running flexible agreement
- He was still paying £1,000 per month towards the loan from a friend
- There were still gambling transactions of around £610
- His account was mainly in debit up to almost £3,000

According to the agreement for loan six, Mr M had a maximum payment of £324 and given Mr M's circumstances set out above; I don't think it was responsible of Lending Stream to agree this loan either.

Loan seven was taken out a week after (and alongside) loan six. So, at time loan seven was agreed, in addition to the circumstances set out above, Mr M also still had the maximum repayment of £324 due in a few weeks for loan six. This meant that in February he was due to repay £540 in total. So it follows that lending to Mr M on this occasion was also irresponsible.

putting things right

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

- Refund all interest and charges applied to Mr M's loans from and including 12 August 2013; and
- Add simple interest at the rate of 8% per year on the above interest and charges from the date they were paid to the date of settlement *;
- Should an outstanding capital balance remain on the loans it is reasonable to deduct these arrears from the compensation payable to Mr M. But if Lending Stream no longer owns this debt, it needs to buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Mr M; and
- Remove any negative information about loans four to seven from Mr M's credit file.

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

my final decision

For the above reasons, I uphold Mr M's complaint and direct Lending Stream Llc to refund Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 October 2017.

Kathryn Milne
Ombudsman