

complaint

Miss W complains about eight instalment loans that she took out with Lending Stream LLC ("LSL"). She said that LSL shouldn't have given her the loans as they were unaffordable.

background

Miss W took out eight instalment loans with LSL, all repayable by six monthly instalments, as follows:

Loan 1 - £350 on 9 August 2015
Loan 2 - £370 on 25 October 2015
Loan 3 - £380 on 17 January 2016
Loan 4 - £300 on 25 April 2016
Loan 5 - £170 on 14 July 2016
Loan 6 - £250 on 14 August 2016
Loan 7 - £440 on 2 October 2016
Loan 8 - £230 on 1 December 2016

Miss W has repaid Loans 1 to 6, but there are still outstanding balances on Loans 7 and 8. Miss W said that LSL was irresponsible to have provided the loans to her and it hadn't carried out correct checks. She said that she had to take out payday loans from other lenders to make her payments.

LSL said that prior to giving the loans, it had asked Miss W for details of her income and expenditure. It reviewed her information, all public information and the details held by credit reference agencies. It said that Miss W's disposable income indicated that the loan repayments could be made without any financial difficulties. It also said that Miss W's credit score was acceptable. But, it offered to close Loan 7 without any further payments due on the loan, and to set the Loan 8 balance at £42.25.

our adjudicator's view

The adjudicator said that the checks LSL had made on the first two loans were sufficient. But he thought better checks should have been done by LSL on Loans 3 to 8. And he thought that better checks would have shown LSL that these loans weren't affordable for Miss W. So he recommended that LSL should:-

- Refund all interest and charges that Miss W had paid on Loans 3 to 8;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Remove any negative information about Loans 3 to 8 from Miss W's credit file.

*HM Revenue & Customs requires LSL to take off tax from this interest. LSL must give Miss W a certificate showing how much tax it's taken off if she asks for one. If LSL intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

LSL disagreed and responded to say that it considered the loans were affordable in view of the amount of Miss W's declared disposable income. And it had relied on the income and expenditure details Miss W had provided to it, although it noted that these were different to those seen by the adjudicator on Miss W's bank statements. It also said that its credit check

before each loan indicated that Miss W had good credit standing, although it didn't have access to all the information on Miss W's credit file. It also said that it didn't ask consumers for bank statements for data protection reasons. And it asked that we evaluate the situation from a business perspective.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss W and to LSL on 27 December 2017. I summarise my findings:

I explained that LSL was required to lend responsibly. It needed to make checks to make sure Miss W could afford to repay each of the loans before it lent to her. Those checks needed to be proportionate to things such as the amount Miss W was borrowing, the length of the agreements and her lending history. But there was no set list of checks LSL had to do.

I explained that the Financial Conduct Authority was the regulator at the time Miss W borrowed from LSL. Its 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." The regulations define 'sustainable' as being able to make repayments without undue difficulty, and say 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 when compared to Miss W's income, or that she was able to repay the first six loans in full and some of the other loans in part, didn't necessarily mean the loans were affordable and that she was able to repay them in a sustainable manner. So, I couldn't assume that because Miss W was able to repay some of her loans in full and some in part that she was able to do so out of her normal income without having to borrow further.

LSL told us that before lending to Miss W, it had asked her about her normal income, and expenditure. And it had checked her credit score. Other than the credit score, I'd not seen any details of LSL's credit check.

I'd carefully thought about whether LSL's checks were proportionate for the eight loans. I noted that for Loan 1, Miss W needed to make six monthly repayments of varying amounts between £56 and £162.40 to repay it. I could see that the repayments were relatively modest compared to the monthly income of £1,500 and disposable income of £937 Miss W had declared to LSL. I thought this information was enough for LSL to rely on at the time of Miss W's loan application. She hadn't borrowed from LSL before, and the repayment amounts weren't large in comparison to the amount of disposable income that she'd provided. So I thought it was reasonable for LSL to give Miss W Loan 1.

With regard to Loan 2, the amount Miss W borrowed had increased slightly from £350 to £370. When she applied for Loan 2, she still had four repayments left to make on Loan 1. So, she would be paying these around the same time as Loan 2 with a combined highest payment of £273.44. Again, I could see that the repayments were relatively modest compared to Miss W's declared disposable income of £719. So, I thought it was proportionate for LSL to consider Miss W's credit score, and her declared income and expenditure, without making further checks for Loan 2. And I didn't think that LSL had acted inappropriately in giving Miss W Loan 2.

I noted that Miss W applied for Loan 3 just before the last payment on Loan 1 was due, but Loan 1 was due to close before the repayments were due on Loan 3. The amount she borrowed had increased slightly by £10 to £380, and she would be paying the last three instalments of Loan 2 around the same time as the first three instalments for Loan 3, with a combined highest monthly payment of £278.46. I noted that this was only around £5 higher than the combined highest repayment for Loans 1 and 2. And the combined repayments for Loans 2 and 3 were similar to Loans 1 and 2 combined. I also noted that Miss W met the respective repayment dates for those loans on time. Miss W's declared disposable income had also increased by almost £200 to £915. As the repayments were still relatively modest compared to Miss W's increased disposable income, I thought it was still reasonable for LSL to rely on the information Miss W had provided at this stage about her financial situation. And that information suggested that she was able to afford to repay Loan 3. So I didn't think LSL was wrong to give Loan 3 to Miss W.

Loan 4 was taken out over three months after Loan 3, with three repayments for Loan 3 remaining. But as Loan 4 was Miss W's fourth loan in eight months and in view of the regularity of the loans, I thought LSL should have been on notice that it was unlikely Miss W's financial position was as good as she was declaring. I thought Miss W's borrowing from LSL was being taken sufficiently regularly to show that Miss W was reliant on it to get by. So I thought it would have been proportionate for LSL to have asked her some more detailed questions at this point, such as whether she was borrowing from other short term lenders at the same time. I couldn't see that it did this.

Loan 5 was taken less than three months after Loan 4 when repayments on both Loans 3 and 4 were still outstanding. By this time, I thought that Miss W's borrowing record had reached the point where it would have been reasonable for LSL to question whether it could rely on the information Miss W had provided to it about her finances. And, I thought that LSL should have been concerned as to whether Miss W could sustainably afford the repayments on any further loans. So, I thought LSL should have taken steps to independently verify Miss W's income and expenditure so it could fairly assess the affordability of Loan 5. And as LSL then received three further loan applications from Miss W within five months, I thought that level of checks would have been appropriate for the rest of the loans that Miss W took from LSL. It could've done these in a number of ways. It could've asked for evidence of Miss W's income and expenditure such as payslips and bills or it could've looked at things like her bank statements.

Although I didn't think the checks LSL did on Loans 4 onwards were sufficient, that in itself didn't mean that Miss W's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown LSL that Miss W couldn't sustainably afford the loans.

For Loan 4, I thought that it was still reasonable for LSL to rely on the information Miss W had provided about her financial position. She said she had a disposable income of £915. But I also thought LSL needed to supplement this information by asking her if she had other short term borrowing.

To find out what, if any, outstanding short term commitments Miss W had, I'd reviewed her bank statements for the month before Miss W took Loan 4. I thought the statements were the best indication of her short term borrowing at the time. And I could see that Miss W did have other short term loans from other short term lenders which were likely to be repayable in the same month that Loan 4 was due to be repaid. It's clear to me that if LSL had asked

Miss W about her other short term lending, it would have realised that Miss W's financial position was far worse than she'd been declaring. Her short term borrowing totalled around £939 for the month before Loan 4. So, if LSL had done what I considered to be proportionate checks, I thought it would've been clear that Loan 4 wasn't sustainable.

And with regard to Loan 5 onwards, as I've said above, I thought LSL should have been independently checking what Miss W was earning and spending each month. So I'd tried to do this by looking at Miss W's bank statements at the time of these loans, and what she'd told us about her financial situation, to see what better checks would have shown LSL. The bank statements might not have shown LSL everything it would've seen by carrying out proportionate checks. But I thought they were the best indication of Miss W's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these. I appreciated that LSL said it didn't ask for bank statements for data protection reasons. But requiring bank statements was only one of a number of methods it could've used in order to have a full understanding of Miss W's financial situation.

But, looking at Miss W's statements from Loan 5 onwards and taking into account what she'd told us about her finances, it's clear that better checks would have shown LSL that Miss W had insufficient disposable income to repay these loans. Miss W's expenditure on her normal living costs and regular financial commitments was significantly higher than she'd declared to LSL. She'd also continued to take out short term lending from other lenders to supplement her income before Loans 5, 6 and 8. And before Loan 7, Miss W's normal living costs and regular financial commitments alone were more than her income. It was clear that Miss W couldn't afford to repay Loans 5 to 8 in a sustainable manner. So if LSL had done what I considered to be proportionate checks, I didn't think LSL would have thought the loan repayments were sustainable for Miss W and so it wouldn't have given her these loans.

In summary, I thought the checks LSL did for Loans 1, 2 and 3 were proportionate. But I didn't think LSL did enough checks for any of the remaining loans. I thought proportionate checks would have shown LSL the state of Miss W's finances and that she couldn't afford to sustainably repay Loans 4 to 8.

To settle the complaint, I thought LSL should:-

1. Refund all interest and charges that Miss W paid on Loans 4 to 6;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement;
3. With regard to Loans 7 and 8, refund all the interest and charges that Miss W paid on Loans 7 and 8, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
4. Write off any unpaid interest and charges from Loans 7 and 8;
5. Apply the refunds referred to above to reduce any capital outstanding on Loans 7 and 8 and pay any balance to Miss W; and
6. Remove any adverse information about Loans 4 to 8 from Miss W's credit file.

*HM Revenue & Customs requires LSL to take off tax from this interest. LSL must give Miss W a certificate showing how much tax it has taken off if she asks for one. If LSL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Miss W hasn't provided any further information or evidence in response to my provisional decision.

LSL responded to say, in summary, that:

- Miss W's disposable income was sufficient to cover the monthly repayments;
- it had relied on the information Miss W had given it;
- Miss W's credit scores of up to 752 were considerably acceptable;
- it wouldn't ask for bank statements due to the Data Protection Act;
- it didn't believe that lending multiple loans was irresponsible or unaffordable if a consumer's income was substantially higher than her expenditure;
- it requested that I evaluate the entire situation from a business perspective to reach a fair decision;
- it repeated its previous offer with regard to Loans 7 and 8.

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 note that LSL has asked that I evaluate the situation from a business perspective. But my role is to make an independent decision in all the circumstances of the complaint. This means that I need to assess the complaint by looking at both sides.

I note that LSL said that Miss W's disposable income was sufficient to cover her monthly repayments. But for the reasons set out above, I think by the time of Loan 4 that LSL needed to have a greater understanding of Miss W's financial position. So, it could no longer rely on Miss W's declared disposable income.

LSL also said that Miss W's credit score was acceptable. But, for the reasons set out above, I don't think that LSL could solely rely on its credit check and Miss W's declared income and expenditure information from Loan 4 onwards.

And I've also already explained that LSL was entitled to rely on what it was being told by Miss W up to a point. But as I explained in my provisional decision, LSL should have been asking for more information about Miss W's short term lending by Loan 4, and from Loan 5 it should have been verifying the information it was being given by Miss W. Nothing LSL has said changes my conclusions here.

I appreciate what LSL said about asking for bank statements and the Data Protection Act. But as I said in my provisional decision, requiring bank statements was only one of a number of methods it could've used in order to have a full understanding of Miss W's financial situation.

I note that LSL has repeated its offer with regard to Loans 7 and 8. But, as I think proportionate checks would have shown LSL that Loans 4 to 8 weren't sustainable, I still think it should provide redress for all these loans.

After considering the points made by LSL, I'm not persuaded to change my findings from those set out in my provisional decision. I don't think LSL carried out proportionate checks for Loans 4 to 8. And if it had completed proportionate checks, I think it would've found that none of those loans were sustainable for Miss W. So as a responsible lender, I don't think LSL should've approved those loans.

So, I'm satisfied that the proposed resolution in my provisional decision is fair in all the circumstances, and I find no basis to depart from my earlier conclusions.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Lending Stream LLC to:-

1. Refund all interest and charges that Miss W paid on Loans 4 to 6;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement;
3. With regard to Loans 7 and 8, refund all the interest and charges that Miss W paid on Loans 7 and 8, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
4. Write off any unpaid interest and charges from Loans 7 and 8;
5. Apply the refunds referred to above to reduce any capital outstanding on Loans 7 and 8 and pay any balance to Miss W; and
6. Remove any adverse information about Loans 4 to 8 from Miss W's credit file.

*HM Revenue & Customs requires LSL to take off tax from this interest. LSL must give Miss W a certificate showing how much tax it has taken off if she asks for one. If LSL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 2 March 2018.

Roslyn Rawson
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