complaint

Mr W has complained about short-term loans granted to him by Lending Stream LLC ("Lending Stream" or "the lender").

background

Lending Stream agreed 21 loans for Mr W between September 2013 and June 2015. These were all 'instalment loans' i.e. the capital and interest were repaid over several months. The principals borrowed ranged between £50 and £700. All of the loan terms overlapped so Mr W made repayments to more than one loan in every month from October 2013 to December 2015, except in the first and last months. (I have included a table at the end of this decision document which summarises this information from the loan agreements Lending Stream provided.)

Mr W believes Lending Stream was irresponsible to lend to him. He says he was *"in a spiral of payday loans"*.

Lending Stream does not agree it lent irresponsibly but it says that it made a procedural error when approving Mr W's first loan in September 2013 and offered to put this right by refunding the interest Mr W paid for this loan. Mr W did not accept this offer as a resolution and brought his complaint to this service.

One of our adjudicators looked into Mr W's complaint. He didn't investigate whether or not the first loan had been irresponsibly lent but he did investigate the remaining 20. He recommended that Mr W's complaint about most of these loans be upheld and that Lending Stream refunds the interest and charges Mr W paid for his third loan and subsequent loans.

Lending Stream did not agree with this recommendation but increased its offer to include the interest paid on an additional five loans, saying that these loans were approved in quick succession. Mr W declined this offer and so the complaint has come to an ombudsman for a final 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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

In making this decision I have considered whether Lending Stream did everything it should have when assessing Mr W's credit applications. And, following on from this, I have thought about whether any assessment failings resulted in Lending Stream agreeing to lend to Mr W when it should reasonably have known that it would be difficult for him to repay.

Having done so, I plan to uphold Mr W's complaint for broadly the same reasons our adjudicator did and to direct Lending Stream to refund the interest and charges for all his loans, except the second one. I appreciate that this will be a disappointing outcome for Lending Stream but I hope my explanation makes it clear why I have come to this conclusion.

did Lending Stream carry out proportionate checks?

In response to Mr W's complaint and our adjudication Lending Stream says that:

- It checked Mr W's income and expenditure each time he applied for a loan. And it checked his credit file.
- It sets a minimum threshold for expenditure figures and where the information received from the consumer is lower than this figure it considers the value as per its minimum threshold. The ideal disposable income calculated in this way indicated that Mr W's loans were affordable.
- Mr W's income well exceeded his expenditure each time. He always had a high credit score and had no defaults or delinquency notices on his credit file.
- Multiple lending should not be considered as irresponsible or unaffordable if a customer's income is substantially higher than their expenditure.
- Its affordability analysis proved that the loans it granted to Mr W were affordable for him. It would only carry out additional checks, such as asking for bank statements, if these were needed to approve an application.
- When Mr W told it he was experiencing financial hardship it assisted him as needed.

The regulations and guidance in place at the time (set out by the Office of Fair Trading, OFT, and since April 2014 the Financial Conduct Authority, FCA) are not prescriptive about what checks a lender needs to carry out. However, they do require lenders to take reasonable steps to ensure that a borrower can *sustainably* repay credit. In other words, Lending Stream had to take steps to ensure that Mr W could repay its loans out of his normal means without having to borrow elsewhere in order to do so. The regulations are not prescriptive about what these checks should be but any checks need to consider the circumstances of the loan and the risk to the borrower of not being able to repay it.

Firstly, I would say that how Lending Stream interpreted the credit score was up to it – different lenders might view the score differently depending on their internal lending criteria. When Lending Stream asked Mr W about his income and expenditure it was entitled to rely on that information, unless it had cause to question its veracity. It has recorded Mr W's expenditure as £200 for his second to seventh loans. The credit checks results it provided indicate that he had over £14,000 of outstanding debt throughout this time.

Mr W first asked for a loan in September 2013. He asked for a second in November and a third and fourth in December. While multiple concurrent loans of themselves may not be unaffordable, Lending Stream needed to make sure that Mr W could repay later loans while meeting his commitments for earlier loans. It's debateable for me whether or not Lending Stream should have done more to check Mr W's financial circumstances when he first asked for a loan – his expenditure seems low relative to the level of existing debt shown on his credit file. However, for Mr W's first two loans I don't think Lending Stream had the benefit of its own experience of Mr W's borrowing when it agreed these and so I think the checks it did were proportionate.

When Mr W applied for his third loan in December, I think Lending Stream should have become concerned that Mr W might be becoming dependent on its loans to meet his living costs. And this combined with the information it had already gathered regarding Mr W's existing debts should have caused it to question whether or not he would be able to repay a third loan out of his normal means. And so I think it should have enquired further into Mr W's credit commitments, including short term lending, at this point. I don't think it did this and so I think its checks on the affordability of this loan for Mr W were not sufficient given the circumstances of the lending.

Similarly when Mr W asked for a fourth loan, I think Lending Stream should have made sure it understood what all of his monthly commitments were, including any short term ones, before agreeing to lend to him. And when he asked for a fifth loan in February (bringing his combined agreed loan repayments to over £400 the following month) I think Lending Stream needed to have a full picture of Mr W's finances at this point before agreeing a fifth loan. This might mean verifying the figures Mr W provided about his income and expenditure for example through wage slips, evidence of bills or his bank statements. Again, I don't think it did this. So I think the checks Lending Stream carried out for Mr W's fourth and fifth loans and, by the same logic, all subsequent loans were not enough.

Mr W's declared income increased from £1,600 to £2,000 when he asked for his 15th loan and remained at this level for his subsequent loans. Given this loan was for £700, more than twice the previous loan amount and bearing in mind Mr W's sequential borrowing history, I don't think this increase in income would have allayed any concerns that Lending Stream should have had about Mr W's ability to repay his credit without financial difficulty. I note that the credit check results for Mr W's next loan indicate that his active loans with other lenders came to over £36,000.

In summary, I think Lending Stream should have done more beyond asking Mr W about his income and expenditure and checking his credit file from his third loan onwards.

what would further checks most likely have shown?

I've looked through Mr W's bank statements to understand what he might have told Lending Stream about his short term lending commitments, had it asked him about these when he came to borrow his third and fourth loans. These were agreed on the 20th and 30th of December 2013 respectively and the repayments for both loans began in January 2014. When these loans were agreed Mr W had over £1,000 of outstanding short terms loans. I don't think Lending Stream would have been confident in Mr W's ability to sustainably repay his third and fourth loans, considering what it knew and should have known about his circumstances at the time. And so I think it was irresponsible of it to have agreed these loans.

As I've said above, when Mr W asked for his fifth loan I think Lending Stream needed to gather a more comprehensive picture of his finances before agreeing to lend to him. This loan was agreed in mid February 2014. I can see from Mr W's bank statements that he repaid almost £1,600 of short term loans in January and about £330 on a long term loan. He also spent over £400 on what appears to be gambling. Mr W's wages came to approximately £2,200 that month and even before considering any usual living costs such as rent etc., I don't think Lending Stream would have agreed to lend to him at this point, given the level of his existing commitments.

Mr W's situation didn't improve throughout the time he borrowed from Lending Stream. His monthly repayments on existing credit fluctuated around £1,500 (and over £3,000 in March 2015 for example). And he continued to spend regular amounts on what appears to be gambling e.g. £1,400 in March 2014 and £600 in March 2015. Had Lending Stream carried out what I consider would have been proportionate checks when Mr W asked for credit, it's likely to have found out that further credit was unaffordable for him and would not have agreed any of his loans.

what Lending Stream should do to put things right

In order to put things right for Mr W, I think Lending Stream needs to refund all of the interest and charges he paid for his loans from his third loan onwards. Specifically it should:

- refund all interest and charges for Mr W's loans agreed in the period December 2013 to June 2015.
- honour its offer to refund the interest Mr W paid for his first loan taken out in September 2013 due to what it has said was a procedural error.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr W's credit file.

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

my final decision

For the reasons set out above, I partially uphold this complaint and direct Lending Stream LLC to refund Mr W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 July 2017.

Michelle Boundy
ombudsman

appendix – combined repayments from Mr W's loan agreements