

complaint

Mr H complains about 10 instalment loans he's taken with Lending Stream LLC (Lending Stream). Mr H says the loans were unaffordable and so shouldn't have been given to him.

background

The background to this complaint was set out in my provisional decision I sent in January 2018. 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 partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Mr H has told us he doesn't have anything further to add. Lending Stream has given us some additional comments.

I've carefully considered everything Lending Stream has told us. In summary it said;

- Lending Stream was entitled to rely on the information Mr H had provided.
- Mr H's loans shouldn't be considered to be unaffordable because he only had 10 loans.
- Mr H repaid most of his loan accounts early which saved him interest and created a good credit standing.
- Based on the credit checks that Lending Stream carried out it could see that Mr H didn't have any defaulted or delinquent accounts.
- Some of Mr H's loan had relatively small monthly repayments so these loans should be considered substantial.
- Bank statements would've only have been required if additional checks needed to be carried out.
- Mr H didn't inform Lending Stream of any financial difficulties he was having, and had he done so Lending Stream would've offered support.

However, in order to resolve the complaint, Lending Stream made an offer in line with our approach to settle loans 4 and 5.

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.

As I explained in my provisional decision, there was no set list of checks Lending Stream had to do before it agreed to lend. And I accept that early on in chain of borrowing it's reasonable for Lending Stream to rely on the plausible information Mr H was providing. And for the early loans, the information Mr H provided showed he could afford to make the payments he was committed to making, so I don't think it was wrong of Lending Stream to have provided the first 3 loans.

However, given Mr H's pattern of borrowing I think Lending Stream needed to do more. I appreciate it carried out credit checks that didn't show any defaulted or delinquent accounts and I accept that this is a useful tool to determine how *likely* it was that Mr H would repay his loans – given his previous behaviour. But, by loan 4 – for the reasons I've outlined in my provisional decision, Lending Stream needed to do more which included finding out about his short term credit commitments and then verifying the information Mr H had provided.

While I appreciate Lending Stream says that it wouldn't have asked to see bank statements – this was only one of the ways that Lending Stream could've verified the information Mr H was providing. For example it could've asked for other evidence of his income and his outgoings.

Having reviewed Mr H's loan history, it is clear that some of the loan repayments (for individual loans) were relatively small compared to Mr H's declared income. But that didn't mean that Mr H was in a position to afford to repay what he was borrowing. And in my provisional decision, I outlined what Lending Stream would've likely seen had it carried out proportional checks. And as a result of proportionate checks, it wouldn't have given Mr H some of the loans.

And while Mr H did repay some of his loans early – that didn't mean the loans were affordable for him. Indeed, when the loans were approved, Lending Stream was expecting Mr H to stick to the repayments outlined in the credit agreement. And I don't think that the fact Mr H repaid his loan early was sufficient for Lending Stream to say that the loans were affordable.

So having considered the additional information Lending Stream has given us, and everything I saw before making my provisional decision, I still think Lending Stream was wrong to have given Mr H some of the loans.

what Lending Stream should do to put things right

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

- refund all the interest and charges paid by Mr H on loans 4 - 10,
- add interest at 8% per year simple on the above interest and charges, from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr H's credit file about these loans.

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

If Mr H still owes Lending Stream any of the principal balance he borrowed on the final 3 loans, Lending Stream may deduct this from the compensation that is due to him. To be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr H has made on those loans as though they were applied against the principal sum borrowed.

my final decision

For the reasons given above and in my provisional decision, I partly uphold Mr H's complaint.

Lending Stream LLC should put things right for Mr H as set out above.

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

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION**complaint**

Mr H complains about 10 instalment loans he's taken with Lending Stream LLC (Lending Stream). Mr H says the loans were unaffordable and so shouldn't have been given to him.

background

A summary of Mr H's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date
1	£390.00	03/05/2016	28/10/2016
2	£60.00	17/07/2016	30/10/2016
3	£150.00	02/08/2016	30/10/2016
4	£50.00	23/08/2016	30/10/2016
5	£120.00	08/09/2016	05/11/2016
6	£50.00	12/10/2016	05/11/2016
7	£330.00	04/11/2016	05/11/2016
8	£50.00	20/02/2017	outstanding balance
9	£50.00	24/02/2017	outstanding balance
10	£300.00	05/03/2017	outstanding balance

Mr H had some problems repaying his final 3 loans and Lending Stream says there is an outstanding balance on them. But as part of its investigation Lending Stream offered to remove all of the interest and charges from the last 3 loans so that Mr H would only have to repay the principal amount that he borrowed. Mr H didn't accept this offer, and instead brought his complaint to our service.

One of our adjudicator's reviewed Mr H's complaint and she thought Lending Stream hadn't carried out proportionate checks before agreeing to any of the loans when considering what Mr H was expected to repay, compared to his declared income. She also thought that Mr H's borrowing pattern could've indicated that he was becoming dependant on the loans and so Lending Stream should've carried out detailed checks, which should've included verifying the information Mr H was providing.

The adjudicator recommended that Mr H's complaint be fully upheld because, had Lending Stream carried out proportionate checks it would've seen that Mr H had outstanding payday loans with other companies which meant he didn't have enough disposable income to be able to afford these loans.

Lending Stream didn't agree with the recommendation, in response it made a number of points including;

- the loans were affordable based on Mr H's declared disposable income,
- holding multiple loans at one time doesn't mean the loans were irresponsibly lent,
- Lending Stream checked Mr H's creditworthiness with a credit reference agency,
- Lending Stream wouldn't have asked to see Mr H's bank statements and
- Mr H was required to declare all of his expenditure.

These points didn't change the adjudicator's mind and because no agreement could be reached the case has been passed to me.

my provisional findings

I've considered all of the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've carefully thought about everything I've been given and having done so, I'm intending to partly uphold Mr H's complaint and I'll explain why below.

All of the loans Lending Stream gave Mr H were instalment loans. So this means, the checks Lending Stream needed to carry out, had to show that Mr H could sustainably afford to repay the instalments as and when they became due – without it impacting on his financial position.

Lending Stream had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules don't set out what checks must be done before lending is approved – but it is a customer focused test. So, Lending Stream needed to conduct enough checks to make sure the loan was affordable for Mr H. And these checks needed to be proportionate to a number of things, such as the size of the loan and when the loan was due to be repaid.

But even if the checks Lending Stream carried out weren't proportionate, that alone doesn't mean Mr H's complaint should be upheld. I say this because, it's possible further checks may have shown Lending Stream that Mr H was able to afford the loans. In which case, Lending Stream wouldn't have been wrong to lend him the money.

Lending Stream says it carried out a number of credit and affordability checks before it agreed to lend to Mr H. It says on each occasion, it carried out credit checks – but it hasn't been able to show us the results of those searches. It also says that its decisions to lend were based on these checks as well as the income and expenditure information Mr H provided.

Lending Stream says that based on the information it gathered about Mr H, it was reasonable to lend to him because its assessments showed he could afford the loan repayments. But I've thought about what Lending Stream says and Mr H's circumstances at the time each loan was approved. And having done so, I don't think the checks Lending Stream carried out on all of the loans were proportionate.

For Mr H's first loan, I think the checks Lending Stream carried out went far enough. The largest contractual repayment Mr H was due to make was £150.21 and based on the income Mr H declared (£1,289) and his outgoings (£966) Lending Stream could see that Mr H had enough disposable income to afford the largest repayment. And Lending Stream hadn't seen anything else in the other checks that it carried out to make it question the validity of the information Mr H had given. So I don't think Lending Stream was wrong to have given Mr H this loan.

I appreciate that our adjudicator felt that for the first loan, Lending Stream would've likely found out about other short term lending commitments. But, taking into account the largest contractual repayment Mr H was committed to making, I don't think, at this point in the loan chain, it would've been proportionate for Lending Stream to carry out the level of checks the adjudicator felt was needed.

Mr H borrowed less for his second loan than he had for his first – but his first loan was still running meaning his largest contractual repayment would've been £162.27. But I still think Lending Stream's checks went far enough. It gathered information about Mr H's income and information about his outgoings – and for loan 2, Mr H declared disposable income of £861. Taking into account his loan history and what he was committed to repaying – I think the checks Lending Stream carried out were sufficient. So I won't be asking Lending Stream to do any more for this loan.

When loan 3 was approved Mr H's first and second loan were still outstanding so when assessing the affordability for this loan, Lending Stream should've taken into account the largest repayment that Mr H would've to make – and I can see would've been £207.60. And again, I think the checks Lending Stream carried out were sufficient. It hadn't seen anything in the information it had been given to give it any cause for concern about validity of the information Mr H had provided. And based on the checks that it carried out it could see Mr H would be able to afford the repayments he was committed to making because his income had now increased to £1,440. So I don't think it was wrong of Lending Stream to have given Mr H his third loan.

I have considered what Lending Stream saw as a result of its credit checks. But in this case, I don't think it would've been concerned by what it saw – and certainly not enough to make it think that it needed to ask or gather further information from Mr H.

Mr H's borrowing for loan 4 had decreased, but loans 1 – 3 were still outstanding at the time. So with the largest repayment amount Mr H was expected to make was £203.16. And Mr H had already declared to Lending Stream that he had £702 disposable income – so on the face of it, it would still seem that Mr H had enough disposable income to be able to afford the repayments he was committed to making. But by now, I don't think these checks went far enough.

Mr H had now borrowed 4 times in a little over three months. And he now had 4 loans outstanding and I think this should've given Lending Stream some cause for concern that Mr H may have been having some problems managing his finances. So I don't think carrying out a credit check and gathering information about his income and his outgoings was sufficient. I think Lending Stream would've wanted a more up to date picture of his financial position. By now it should've made some further enquires to see whether Mr H had any other outstanding short term credit commitments that he may have had.

Mr H has provided us with copies of his bank statements, I've reviewed these to see whether he had any outstanding short term credit commitments at the time. And I can see from the statements provided, that Mr H owed another short term lender over £500 when this loan was approved. And Lending Stream was aware that Mr H's disposable income was £702. So taking into account what he was committed to repaying Lending Stream and the other lender, I don't think Lending Stream would've thought the loan repayments were sustainable for Mr H and so, as a responsible lender it wouldn't have given him this loan.

When loan 5 was approved, Mr H still had loans 1 – 4 outstanding and his largest contractual repayment that he would've been expecting to make was £256.92. But taking into account Mr H's borrowing history I think Lending Stream needed to be carrying out more in depth checks, than relying on his declared disposable income and a credit check. I think by now, Lending Stream would've wanted the fullest possible, understanding of Mr H's position – which would've included verifying the information he was providing.

I appreciate, what Lending Stream says that it wouldn't have asked to see Mr H's bank statements in order to verify the information Mr H had provided. But this is just one of the ways Lending Stream could've verified the information Mr H was providing. It could've asked for evidence of Mr H's income and his outgoings – including his financial commitments. Or it could've asked to view Mr H's bank statements – which are the best indication of his ability to afford the loan at the time. So I don't think it's unreasonable to have relied on these.

Based on what I've seen of Mr H's circumstances at the time of this loan, the figure he gave Lending Stream for his income was broadly correct. But had Lending Stream verified Mr H's information it would've seen that at the time, he owed other short term lenders over £600. Mr H still had his regular living costs to meet on top of this. So, had Lending Stream carried out proportionate checks, I think it would've discovered this, and as a responsible lender, I don't think it would've agreed to lend Mr H this loan.

For all remaining loans, I still think Lending Stream should've had a full picture of Mr H's financial circumstances – taking into account his borrowing history and the fact that at times he had up to six outstanding loans with it. And having reviewed Mr H's bank statements, I can see his financial position didn't change after the fifth loan.

Mr H's declared income was broadly correct, and I can see that he was borrowing from a number of other payday lenders – and these sums needed to be repaid. For example when loan 7 was approved, he owed other lenders over £500. And before loan 9 was approved he owed other lenders over £650. So if Lending Stream had carried out proportionate checks, it would've seen that Mr H

wasn't in a position to repay any of his remaining loans sustainably. And as a responsible lender, it shouldn't have approved these loans.