

complaint

Miss D complains Lending Stream LLC lent to her irresponsibly.

background

Miss D took out 29 loans with Lending Stream between March 2011 and August 2015. She had taken out five loans previously with Lending Stream, but they don't form a part of this complaint. I've included a table at the end of this decision which provides some of the information we've received about these loans. As the first loan included in this complaint is actually Miss D's sixth loan from Lending Stream, I will refer to it as the sixth loan.

Miss D finished repaying her last loan in September 2015. Next year she complained that Lending Stream shouldn't have given her any of her loans. Lending Stream disagreed and argued that it had checked to make sure she could afford the loans.

The case was then brought to this service, where it was looked into by one of our adjudicators. She concluded Lending Stream had not been thorough enough when checking the affordability of the loans. If it had done so, she thought Lending Stream would have seen Miss D couldn't afford them. She recommended Lending Stream refund all interest and charges on the loans, and amend Miss D's credit file.

Lending Stream didn't agree. It made a number of points, with the most strongly made point being that it had asked Miss D for her income and expenditure, and what she'd said about this at the time made it look as though her loans were affordable. It said Miss D had a responsibility to be truthful when supplying information about this.

The complaint has now been passed to me to decide.

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've taken into account the law along with any relevant regulatory guidance and good industry practice at the time.

Lending Stream had to assess Miss D's applications for borrowing to check if she could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. It then needed to assess whether – based on the information it had gathered from its proportionate checks – Miss D could afford to make her loan repayments sustainably. The industry regulators during the period in which Miss D applied for her loans issued guidance which explained repayments are sustainable if they're made from income or savings. So not if they're made – for example – from further borrowing.

I appreciate the point Lending Stream has made about Miss D having a responsibility to provide accurate information to help inform its lending decisions. It's also true that lenders are generally entitled to rely on the information given by potential borrowers when making such decisions. However, at the time Miss D borrowed loans 6 to 21, the guidance from the industry regulator indicated there was an exception to this general principle – if a lender had reason to suspect information given by a borrower might be incorrect. From loan 22 onwards, the new regulator issued guidance which stated that it was *“not generally sufficient”* for a lender to *“...rely solely for its assessment of...income and expenditure, on a statement of those matters made by the customer.”*

Having considered Miss D's pattern of borrowing up to loan 6, and the information she'd given on her applications, I think it would have been proportionate for a responsible lender to carry out further checks before agreeing to lend to her. This was Miss D's sixth loan in as many months. High cost instalment loans like these are intended to cover short-term cash-flow problems, but Miss D's repeated borrowing suggested she may have had more long-term financial problems.

Specifically with regard to loan 6, I note the highest scheduled monthly repayment Miss D was expected to make was £207.50. During her application Miss D had told Lending Stream her monthly income was £1,600 and her monthly expenditure was £1,400. So, on the face of it, Miss D didn't have enough available income to meet her repayments. On the basis of the information Miss D had provided I think Lending Stream should not have agreed this loan.

Miss D began to report lower expenditure from loan 7 onwards, which made her repayments appear more affordable. But given the ongoing pattern of borrowing I think it would've been proportionate for a responsible lender to take steps to establish a true and up to date picture of Miss D's financial situation, to see if she could repay her loans sustainably. Even though some of the loans Miss D applied for were quite small, I think Lending Stream should have continued to carry out robust and detailed checks throughout the period covered in this decision.

what would proportionate checks have shown?

I've already said that Lending Stream shouldn't have agreed loan 6 on the basis this would have appeared unaffordable on the basis of the information Miss D actually provided. Having determined Miss D's actual financial situation at the time by analysing her bank statements, I remain of this view.

Around the time Miss D applied for loan 6, her income from her job came to around £1,150 per month. She was paying rent of £950. This was a responsibility she shared with her partner at the time, but Miss D has explained he did not always have a job so she sometimes had to pay all of the rent herself. This account of events is consistent with the pattern of transactions on Miss D's account.

So in some months, nearly all of Miss D's income was already committed to rent. And sometimes it looks like she had rent arrears. It also seems she was behind on repayments with her energy company – her direct debits for gas and electricity were around £95 each, and these often went unpaid. Miss D had other bills too, such as a mobile phone and insurances. She was consistently at or near the limit of her £3,000 overdraft, and occasionally she went over it. Repayments to other short term lenders appeared on her account on a regular basis.

It looks like Miss D was able to keep up with her bills through a combination of financial support and loans from family and friends, and loans from short term lenders. It's not sustainable for a person to rely on short term lending to cover their normal living expenses for an extended period of time. And although Miss D appears to have had fairly regular help from family members, this is not something which was guaranteed to continue.

Based on her regular income and expenditure, I don't think a responsible lender would have thought Miss D had capacity for further borrowing at the point she applied for loan 6. It follows that I don't think Lending Stream should have agreed this loan.

Miss D's financial situation continued in this way for some time – and so for the same reasons I don't think Lending Stream should have agreed loans 7 to 9 either. Miss D paid off these loans on the same day in September 2011, after receiving £2,500 from a friend. This amount was also used to make payments to other short term lenders, and other friends and family members Miss D had borrowed from. Miss D reached her overdraft limit again within four days.

However, Miss D's finances did temporarily improve due to her reduced debts, and support she was now receiving with her rent. She didn't borrow from Lending Stream again until April 2012, so I've had a look at her financial situation at around this time to see if anything had changed.

what would proportionate checks have shown for loans 10 to 14?

Miss D's financial situation had deteriorated again by the time she applied for loan 10. It appears she had fallen back into rent arrears and she had to pay rent twice in February 2012. She received support with the rent this month from her partner, but not in March 2012.

Miss D was also paying back people she'd borrowed money from, at a rate of around £350 per month. Overall she was still receiving more support from family and friends than she was paying back, but she'd also begun borrowing again from other short term lenders, and gambling transactions were beginning to appear on her bank statements as well.

I think a brief overview of Miss D's financial situation would have led a responsible lender to think there was a high risk that loan 10 would be unsustainable. Even when the intermittent financial support from individuals is taken into account, Miss D's outstanding short term debts meant she did not have enough income available to take on any further borrowing. It follows that I don't think Lending Stream should have agreed this loan.

Miss D continued to borrow for the rest of the year, and the pattern of transactions on her account remained similar, with increasing levels of short term debt. By October 2012 she was spending over £1,000 per month servicing other loans. So I don't think a responsible lender would have agreed any of loans 11 to 14 either.

what would proportionate checks have shown for loans 15 to 21?

In the months leading up to her application for loan 15, Miss D's financial circumstances had not changed much. She earned around £1,120 per month and it appears she was no longer in rent arrears, although she missed her energy payments in most months. In the month she took out loan 15, up until the day of her application, she received £3,105 from other individuals and paid them back £1,935. She was regularly taking out and paying off loans from other short term lenders.

I think a responsible lender would still have thought at this point that Miss D's regular income was not enough to meet her regular financial commitments. Although her friends and family continued to provide support, this varied from month to month and could not be relied on. In addition, just before taking out loan 15 Miss D borrowed £500 from a payday lender. When this is considered, Miss D would've had no available income to repay loan 15, even when the support from her family and friends is taken into account. Overall I don't think a responsible lender would've granted this loan.

Looking over Miss D's financial situation until August 2013 (when she took out loan 21), I can see little sign of improvement, although there were some changes.

Miss D stopped receiving a salary in March 2013 and my understanding is that she became self-employed at around this time. She began to transfer money to herself from a limited company she'd set up. For example, Miss D transferred around £2,150 to her personal account in April 2013. She received around £2,875 from individuals but paid £3,300 back that month. It also looks like Miss D fell behind on her rent again, and she continued to take out short term loans with other lenders.

So Miss D's income had increased, but so had her expenditure as she was now paying back more money to her friends and family than she was receiving. Her overall position remained more or less the same until August 2013, so I've come to the same conclusion for loans 16 to 21 also – that a responsible lender would not have granted them.

what would proportionate checks have shown for loan 22?

Miss D paid off loan 21 in September 2013 and didn't take out another loan with Lending Stream until April 2014. This is because Miss D obtained some temporary financial relief. She received around £13,000 in September 2013 which she used to clear her debts. All of this money had been used up by the beginning of October 2013, but as with the situation after loan 9, clearing her debts allowed Miss D to end her reliance on short term lending, at least for a time.

At the time Miss D applied for loan 22 her income from her business was quite variable, with good months and bad months. On average she transferred around £1,880 per month from her business to her personal account, and she received a similar amount from individuals (but paid back £1,260). Miss D's credit card bills had increased to around £250 per month, and her household and phone bills came to about £720 (most likely due to arrears). Her rent was £1,025 per month.

In addition to this, Miss D was paying debt collectors £40 per month, around £65 in bank fees and charges and at least £200 per month on food. Miss D had begun borrowing again from short term lenders but did not have any loans outstanding at the time she applied to Lending Stream as far as I've been able to see.

Bearing all the above in mind Miss D wouldn't have had enough available income to make her repayments to Lending Stream. So I don't think it would have lent to her, had it carried out proportionate checks.

what would proportionate checks have shown for loan 23 onwards?

Miss D borrowed almost continuously from Lending Stream from September 2014 to August 2015. She applied for loans typically every month, and sometimes more than once per month.

At the time she applied for loan 23 Miss D received on average around £2,100 per month from her business. In the month she took out loan 23, Miss D received about the same amount of money from friends and family as she paid back. She continued to pay rent of £1,025 per month, along with personal bills (including food) which came to around £485 per month. Miss D also spent £410 in September 2014 on gambling transactions.

This left Miss D with about £180 to meet any other commitments she had, including paying back loans to Lending Stream. As the largest repayment Miss D would be expected to make towards loan 23 was £216, this was an unaffordable loan. I think Lending Stream would have noted this, and not agreed this loan, had it carried out proportionate checks.

Miss D's situation was more or less the same when she applied for loan 24, but at this point she was actually paying more back to her friends and family than she was receiving from them. I don't think Lending Stream would have agreed this loan either had it carried out detailed enough checks.

I've reviewed Miss D's finances for the rest of the period covering loans 25 to 34. While there are some changes to Miss D's situation (for example, at one point she moved house and appears to have paid a little less rent), her overall financial picture had the same key attributes which I think would have made a responsible lender think all of loans 25 to 34 were unsustainable. Such attributes included an irregular income, reliance on financial support from friends and family to meet her regular expenditure, frequent borrowing from other short term lenders, and a significant level of gambling transactions. Taking all of this into account I don't think Lending Stream should have agreed these loans.

putting things right

As Lending Stream shouldn't have granted any of loans 6 to 34 to Miss D, it's not right that she should have had to pay interest on these loans, or have them affect her credit file in a negative way.

So, to resolve Miss D's complaint, Lending Stream must:

1. Calculate the amount Miss D has paid in interest and charges for loans 6 to 34. To these amounts Lending Stream should add 8% simple interest per year*, from the date Miss D paid them, to the date the complaint is settled. Lending Stream should then pay the total calculated to Miss D.
2. Remove any adverse information relating to loans 6 to 34 from Miss D's credit file.

*HM Revenue and Customs requires Lending Stream to take off tax from this interest. It must give Miss D a certificate showing how much tax it's taken off, if Miss D asks for one.

my final decision

For the reasons I've explained above, I uphold Miss D's complaint and direct Lending Stream LLC to take the actions set out in the "putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 4 December 2017.

Will Culley
ombudsman

loan table

Loan #	Date	Date Repaid	Capital	Highest Repayment
6	01/03/2011	28/04/2011	£415	£207.50
7	08/06/2011	19/09/2011	£415	£207.50
8	09/08/2011	19/09/2011	£95	£60.17
9	14/09/2011	19/09/2011	£75	£47.50
10	05/04/2012	28/09/2012	£415	£207.50
11	30/07/2012	28/12/2012	£245	£122.50
12	14/09/2012	28/12/2012	£165	£90.75
13	01/10/2012	22/12/2012	£135	£74.25
14	31/10/2012	22/12/2012	£85	£53.84
15	28/02/2013	27/08/2013	£495	£247.50
16	29/04/2013	24/05/2013	£95	£60.17
17	04/05/2013	24/05/2013	£85	£53.84
18	27/05/2013	28/06/2013	£95	£60.17
19	04/07/2013	23/09/2013	£155	£85.25
20	30/07/2013	23/09/2013	£230	£115.00
21	30/08/2013	23/09/2013	£100	£54.00
22	15/04/2014	26/09/2014	£500	£270.00
23	25/09/2014	20/03/2015	£400	£216.00
24	26/10/2014	28/11/2014	£630	£340.20
25	31/12/2014	13/03/2015	£150	£63.60
26	04/01/2015	20/03/2015	£250	£106.00
27	23/02/2015	10/08/2015	£200	£88.00
28	04/03/2015	10/08/2015	£180	£79.20
29	22/03/2015	10/08/2015	£120	£51.84
30	08/06/2015	24/09/2015	£80	£88.00
31	25/06/2015	24/09/2015	£380	£35.84
32	03/08/2015	24/09/2015	£210	£97.44
33	23/08/2015	24/09/2015	£100	£44.00
34	26/08/2015	24/09/2015	£120	£52.80