

complaint

Mr A complains that Lending Stream LLC wrongly lent him money he couldn't afford to pay back.

background

Mr A took out four instalment loans with Lending Stream between October and November 2013. He said that the business didn't carry out proper affordability checks and allowed him to continue borrowing when he was in financial difficulty. He says that this has led to a spiral of debt and he has had to take out more and more loans. The level of borrowing was unsustainable and he was unable to make repayments.

Lending Stream said that it did carry out checks and the loans were affordable on its criteria. It carried out a credit check and asked Mr A about his outgoings. It explained that it set a higher level for outgoings than Mr A reported and it was reasonable to rely on what he said.

Our adjudicator recommended that the complaint should be upheld in part. He thought that Lending Stream should have carried out more checks about why Mr A needed to keep borrowing so often at the time of the third loan. He thought that the fact that Mr A asked for his third loan the day after taking out his second loan and before paying off his first two loans indicated he might be in financial difficulty. He thought that Lending Stream should've done more checks and if it had it would've seen that loans 3 and 4 were unaffordable because of Mr A's significant gambling. He recommended that all interest and charges incurred on loans 3 and 4 should be refunded. Lending Stream didn't agree but agreed to refund interest and charges on loan one that it said was granted because of a procedural error. Mr A didn't accept that offer so the complaint has 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.

Before agreeing to lend to Mr A, Lending Stream had to check each time that he could afford to repay the loan. There is no set list of checks that Lending Stream had to carry out. But the checks had to be proportionate to things like – but not limited to – the size of the loan, the repayments and what Lending Stream knew about Mr A.

Lending Stream says it asked Mr A about his income and outgoings and did a credit check before agreeing to lend to him. I don't know what Lending Stream would've seen on Mr A's credit file but I accept it might not be the full credit information.

Looking at the first two loans Mr A had defaults on his credit file and was repaying a county court judgement (CCJ). This wouldn't necessarily mean that it was wrong to lend but I would've expected Lending Stream to ask some more detailed questions, especially since Mr A said he didn't have any outgoings. But if Lending Stream had asked further questions I think it is likely Mr A would've said his outgoings were the same as he gave on the second loan application of £1700. The monthly repayments on the loan would've looked affordable on the figures. I agree with the adjudicator that it was reasonable to lend loan one.

Mr A asked for loan two on 2 November 2013. He asked for £350 again repayable over 6 months. He had successfully made the first repayment due on loan one. He gave his income

as £2100 and his outgoings as £1700. I agree with the adjudicator that it would have been reasonable to ask Mr A specifically about any other short term lending he may have had to make sure he wasn't reliant on this sort of credit given his borrowing history. However, as Mr A didn't have any other short term lending I don't think better checks would have made a difference to the decision to lend.

The following day Mr A asked for a further loan of £250. Asking for this loan before the previous two loans were repaid in the context of the borrowing history was an indication that Mr A might be reliant on short term credit or struggling financially. I think that Lending Stream should have taken a closer look at Mr A's circumstances before agreeing to lend him this money. I can't see that Mr A was asked why he needed to borrow so often given his declared level of disposable monthly income.

I think that given what it knew about Mr A at this point Lending Stream should've conducted a full review of Mr A's finances and not just relied on what he said about his income and outgoings. I have reviewed Mr A's bank statements for this period and I agree with the adjudicator that the third and fourth loans were unaffordable given Mr A's significant gambling. As a responsible lender Lending Stream wouldn't have given him these loans if it had carried out these checks.

Although Lending Stream didn't have to ask for bank statements, given Mr A's borrowing history, his previous CCJ and defaults together with the increasing amounts borrowed, the signs were there that Mr A was in difficulty.

Although on the face of it Mr A said he had enough money coming in to meet the repayments his pattern of borrowing from Lending Stream suggested otherwise.

Although Mr A took out the loans and said he could afford them I don't think that this is enough for me to say Lending Stream acted responsibly. Mr A wanted and needed the loans because of the gambling debt he was in. Lending Stream ought to have known this was the case at the time of the application for the third loan and done more thorough checking of his circumstances.

Mr A has had the benefit of the money so I think it is only fair that he pays it back but I agree with the adjudicator that all interest and/or charges applied to loans 3 and 4 should be refunded and all adverse information recorded on Mr A's credit file about these loans should be removed.

I have said that better checks would not have made a difference to loan one but Lending Stream have identified a procedural error in relation to this loan. It seems fair that if the business accept this loan should not have been granted then all fees and charges incurred on this loan should also be refunded.

my final decision

My final decision is that I uphold this complaint. In full and final settlement of it Lending Stream LLC should do the following:

- refund any interest and/or charges applied to loans 1,3 and 4 together with 8% simple interest per year from the time that the interest and charges were paid to the time Mr A gets it back.

- write off any interest and charges that Mr A hasn't paid;
- deduct any capital still owing from the compensation due;
- remove any adverse information recorded about the refunded loans from Mr A's credit file.

If Lending Stream LLC sold the remaining debt to a third party debt purchaser it should buy the debt back before doing what I've said above. If this isn't possible it should (in addition to the above if necessary):

- arrange to repay any portion of the sum due to the third party that is made up of interest and charges – including any added by the third party;
- refund Mr A any interest and charges she has already paid to the third party plus 8% interest simple per annum on each amount from the date of payment to the date of settlement*;
- instruct the third party to remove any adverse information it may have recorded about the loans.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 February 2018.

Emma Boothroyd
ombudsman