

complaint

Ms C has complained that Lending Stream LLC (“Lending Stream”) provided several short term loans which were unaffordable for her.

background

Lending Stream says it agreed 22 loans for Ms C between September 2010 and March 2014. These loans were “instalment loans” which means the amounts being borrowed were due to be repaid over a number of months, in this case usually six. The below table includes some of the information Lending Stream has provided about the loans:

loan number	date borrowed	amount borrowed	date repaid
1	22/09/2010	£215.00	14/10/2010
2	19/10/2010	£215.00	27/10/2010
3	14/12/2010	£145.00	08/04/2011
4	29/02/2012	£115.00	30/03/2012
5	22/03/2012	£115.00	31/03/2012
6	12/07/2012	£100.00	30/11/2012
7	13/08/2012	£100.00	31/12/2012
8	03/01/2013	£215.00	27/04/2013
9	18/07/2013	£100.00	29/07/2013
10	22/08/2013	£100.00	02/10/2013
11	09/09/2013	£250.00	30/12/2013
12	25/09/2013	£50.00	02/10/2013
13	17/10/2013	£100.00	30/12/2013
14	21/10/2013	£120.00	30/12/2013
15	01/11/2013	£100.00	30/12/2013
16	18/11/2013	£100.00	30/12/2013
17	12/12/2013	£50.00	30/12/2013
18	01/02/2014	£100.00	27/02/2014
19	23/02/2014	£50.00	27/02/2014
20	28/02/2014	£200.00	06/01/2016
21	15/03/2014	£100.00	13/01/2016
22	19/03/2014	£100.00	25/01/2016

Lending Stream says that loans 1 to 3 were approved as a result of a procedural error. So it offered to refund the interest and charges Ms C paid towards these loans before she brought her complaint to our service.

One of our adjudicators reviewed this complaint. She said that as Lending Stream had made an offer in line with our approach for loans 1 to 3, she would only assess whether Lending Stream carried out sufficient checks for loans 4 to 22. Our adjudicator thought that Lending Stream had carried out proportionate affordability checks before agreeing to loans 4 to 7. But she thought it should've carried out more detailed checks for each of the remaining loans. And if it had, she thought Lending Stream would've discovered that loans 8 to 22 weren't sustainably affordable for Ms C. So she thought it should refund the interest and charges Ms C paid towards those loans, to put things right.

Lending Stream didn't agree with our adjudicator's assessment. But in response it offered to refund the interest and charges Ms C paid towards loans 11 and 12, loans 14 to 17 and loans 20 to 22. Ms C didn't want to accept the offer. So because no agreement has been reached the complaint has been passed to me for a decision.

As Lending Stream accepted it was wrong to approve loans 1 to 3, and has already made an offer in line with our services approach for these loans, I'll only be considering the affordability of loans 4 to 22 in detail in this 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.

Based on everything I've seen I'm in broad agreement with our adjudicator. I think the checks Lending Stream completed on loans 4 to 7 were proportionate. But I think it should've completed more detailed checks on loans 8 to 22. And if it had I think it's likely it would've discovered that Ms C wasn't able to repay those loans in a sustainable way. I'll explain why in more detail.

Lending Stream was required to lend responsibly. It needed to check that Ms C could afford to repay her loans sustainably. There was no set list of checks it needed to do, but the checks should have been proportionate to the circumstances of each loan. This might include considerations about the amount borrowed, the associated cost and risk to Ms C, her borrowing history including any indications that she might be experiencing (or had experienced) financial difficulty, and so on.

Lending Stream says it carried out proportionate affordability checks by asking Ms C about her regular income and expenditure, and by checking her credit score before it approved each loan. It hasn't provided the results of the credit checks it completed, but it has provided a record of the figures it took from Ms C at the time of each loan.

Ms C took out loan 4 in February 2012. This was the first time she's requested a loan from Lending Stream in around 10 months. So I think it was reasonable for Lending Stream to treat this loan as the first loan in a new chain of lending. Ms C borrowed £115 which she agreed to repay in five instalments. This meant her highest monthly instalment was around £63. At this stage Lending Stream had her income recorded as £1,145 per month and her expenditure as £550. I don't think either of these figures would've seemed implausible. So I think it was reasonable for Lending Stream to rely on the information Ms C provided without needing to verify it.

Taking into account the amount Ms C was borrowing and needed to repay each month, I think the affordability checks Lending Stream completed for loan 4 were proportionate. I don't think it needed to do anything more before it approved this loan. And based on the information Ms C provided, the loan would've appeared affordable. So I don't think Lending Stream was wrong to have approved loan 4.

Ms C took out loan 5 in March 2012. She borrowed £115 which was due to be repaid over five instalments. This meant that several instalments on loans 4 and 5 would be due together. So Lending Stream needed to check that Ms C could afford to repay each of the instalments and combined instalments sustainably.

The highest combined monthly repayment Ms C would need to repay was around £117. Lending Stream says it completed the same checks for this loan and it recorded Ms C's income as £1,300 and her expenditure as £650. And as this was only Ms C's second loan, I still think Lending Stream was entitled to rely on the information Ms C provided, without needing to verify it.

Lending Stream was required to carry out affordability checks that were proportionate to Ms C's circumstances. And looking at the amounts Ms C needed to repay, her repayment history on the first loan, and her declared income and expenditure figures, I think the checks Lending Stream carried out were proportionate. So I don't think it was wrong to approve loan 5 either.

My findings are the same for loans 6 and 7. I say this because the highest amount Ms C would've needed to repay on either loan was around £96, which is relatively low compared to her stated income. She's also successfully repaid loans 4 and 5 early, which I think Lending Stream could take into account when deciding whether to lend again. At this stage Lending Stream again took details of Ms C's income (£1,300) and expenditure (£700). And taking everything into account, I think these checks were proportionate. So I don't think it was wrong to provide these loans.

Ms C took out loan 8 in January 2013, a few days after she repaid loan 7. She was now requesting her fifth loan in relatively quick succession and eighth overall. So I think at this stage Lending Stream should've been alerted to the fact that Ms C might be becoming dependent on the loans it was providing. Based on this, I think it would've been proportionate for Lending Stream to complete more detailed checks than it did. I think it should've verified the information Ms C was providing by building a full picture of her financial situation. There are many ways it could've done this, such as asking for payslips and/or bank statements.

Lending Stream says it doesn't request bank statements when checking affordability, due to the Data Protection Act. But to my knowledge, there's nothing in the Data Protection Act which says a business can't request information from one of its customers. The regulations in place from the Office of Fair Trading (OFT) do suggest that it might be appropriate for lenders to request evidence of income and/or expenditure when assessing affordability. And based on the circumstances here, I think it would've been proportionate for Lending Stream to request some form of evidence from Ms C, at this stage.

From what I've seen of Ms C's circumstances at the time of loan 8, her income was around £1,200 and her outgoings and financial commitments were around £425. These were made up of food £100, petrol/transport £100, mobile phone £52, insurance £56, gym membership £16, credit cards £40, home entertainment £6 and a regular transfer to another account of £55. Ms C has also told us that she needed to pay £50 per week rent to her parents. But I haven't been able to verify these payments or corresponding cash withdrawals for this amount on her statements. So I haven't included her rent payments in my affordability assessment.

In addition to Ms C's regular expenses, she was also borrowing from other short term lenders. In the month before she took out loan 8 she repaid around £1,300 in short term credit, and borrowed a further £930. So if Lending Stream had carried out proportionate checks and built a full picture of Ms C's finances, I think it's likely it would've discovered this. And as a responsible lender, I think it would've concluded that Ms C couldn't afford to repay loan 8 in a sustainable way.

Between loans 8 to 22 the largest gap between repaying one loan and taking out another was around three months. And in the circumstances I don't think that gap is long enough to mean that Lending Stream could revert to relying on the information Ms C gave about her income and expenses, without needing to verify it. So I think it would've been proportionate for Lending Stream to continue building a full picture of Ms C's financial situation before it approved each loan.

From what I've seen, Ms C's financial situation remained broadly the same throughout the remainder of her borrowing. Although her income increased for some of her later loans, she continued to borrow from a number of other short term lenders, in addition to Lending Stream. Taking the amounts she needed to repay for these loans into account, alongside her regular financial commitments, she wouldn't have been able to repay any of the loans sustainably. And I think it's likely Lending Stream would've discovered this, had it completed proportionate affordability checks.

For example, in August 2013 Ms C's income was around £1,200 and her outgoings around £350. In addition to this she paid around £530 to other short term lenders and borrowed a further £815. In October 2013 her income was still around £1,200 and her outgoings around £390. In addition to this she paid around £770 to other short term lenders and borrowed a further £720. In December 2013 her income had increased to around £1,875 and her outgoings were around £400. In addition to this she paid around £1,530 to other short term lenders and borrowed a further £1,600. And in February 2014 her income was around £1,200 again, and her outgoings around £400. In addition to this she paid around £1,630 to other short term lenders and borrowed a further £1,650.

In summary I think the checks Lending Stream completed on loans 4 to 7 were proportionate. But I think it should've completed more detailed checks for the remaining loans. I think proportionate checks are likely to have identified that Ms C was dependent on short term credit, as she was frequently borrowing from several lenders each month. And the overall amounts she was borrowing were increasing over time. So I don't think Lending Stream should've approved loans 8 to 22 for Ms C.

It follows that I think Lending Stream should extend the refund it has offered on loans 1 to 3 and include loans 8 to 22 as well.

what Lending Stream should do to put things right

Lending Stream should:

- refund all interest and charges Ms C has paid towards loans 1 to 3 (including any late fees and default interest).
- refund all interest and charges Ms C has paid towards loans 8 to 22 (including any late fees and default interest).
- pay interest on this refund at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Ms C's credit file.

*HM Revenue & Customs requires Lending Stream to take off tax from this interest.

Lending Stream must give Ms C a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons I've explained above I uphold Ms C's complaint in part.

Lending Stream LLC should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms C to accept or reject my decision before 5 March 2018.

Adam Golding
ombudsman