

complaint

Mr L complains that Lending Stream LLC made short-term loans to him when it shouldn't have.

background

In 2011 and 2012, Lending Stream made 13 instalment loans to Mr L. He repaid the first 10 in full. But he didn't fully repay loans 11, 12 and 13. Lending Stream passed the debts to another company. Mr L complained that Lending Stream hadn't done enough checks that he could afford repayment – which he couldn't. In its final response, Lending Stream noted an error on loan 4 – on which it offered a refund of interest.

Our adjudicator recommended that the complaint should be upheld in part. He thought that Lending Stream was wrong to give Mr L loan 5 and later loans. The adjudicator said that, with better checks, Lending Stream would've known that Mr L couldn't afford to repay those loans. The adjudicator recommended that Lending Stream should - In addition to the redress offered for loan 4:

1. refund all interest and charges that Mr L paid on the loans 5-13;
2. pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
3. write off any unpaid interest and charges of loans 11-13, apply the refund to reduce any capital outstanding and pay any balance to Mr L;
4. remove any negative information about loans 5-13 from Mr L's credit file.

*HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Mr L a certificate showing how much tax it's taken off if he asks for one. If Lending Stream intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Lending Stream disagrees with the adjudicator's opinion. It says, in summary , that - in addition to the offer made in its final response – it offers to refund the interest and charges paid by Mr L on the loans 6, 7, 8 & 11 and to remove from Mr L's credit file adverse entries relating to them.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Lending Stream sold its rights under loans 11 to 13 to another company. The Financial Ombudsman Service can only deal with complaints against one regulated financial firm at a time. So I'm dealing with a complaint against Lending Stream - not against the other company.

Before agreeing to lend to Mr L, Lending Stream had to check each time that he could afford to repay the loan. Affordability checks should be proportionate. There's no set list of proportionate checks. What's proportionate depends on things like - but not limited to - the size of the loan repayments and the information Lending Stream had about Mr L.

From its records and his bank statements, Lending Stream's loans to Mr L were as follows:

Loan No.	loan date	loan amount (£)	date loan repaid
1	11.02.11	115	04.07.11
2	23.05.11	220	31.10.11
3	16.06.11	185	30.11.11
4	01.08.11	160	30.12.11
5	13.10.11	120	29.02.12
6	03.11.11	90	29.02.12
7	14.11.11	90	29.02.12
8	07.12.11	80	30.03.12
9	19.01.12	150	31.05.12
10	12.03.12	170	29.07.12
11	02.04.12	180	not yet repaid
12	20.04.12	80	not yet repaid
13	05.07.12	90	not yet repaid

Each of these loans was repayable over a period of six months or less. Each loan was repayable by instalments which went down after the first couple of months. Some of the loans overlapped so Mr L had to make repayments on more than one loan in a month.

I accept that Lending Stream did credit reference checks. But I don't think such checks provided enough evidence of affordability.

Before loans 1, 2 and 3, Lending Stream recorded Mr L's monthly income as about £1,800. It recorded his monthly expenditure as between £680 and £800.

Loan 1 required monthly repayments of no more than about £63 per month.

Loans 1 and 2 together required repayments of no more than about £156 per month.

Loans 1, 2 & 3 together required repayments of up to about £225 per month.

Loans 2 & 3 together required repayments of no more than about £165 per month.

Such repayments weren't a large proportion of his recorded income. So I'm satisfied that – at that stage - Lending Stream did proportionate checks by asking Mr L about his income and expenditure.

For loan 4, Lending Stream has said that it made a procedural error. It has made an offer to refund interest on that loan and I think it's fair to hold it to that offer.

Loans 2, 3 & 4 were still running when Mr L took loan 5. Mr L was committing to make repayments until February 2012 – a year after his first loan. And together loans 2 to 5 were going to require repayments of up to (in the month of October 2011) about £228 in a month.

So I think that – for loan 5 and later loans – proportionate checks would've been enough checks to get a full picture of Mr L's financial circumstances. This might've included asking him for copies of documents such as payslips, bills and bank statements. There's not enough evidence that Lending Stream did checks at that level.

So I've thought about what Lending Stream would've seen if it had done such checks before loans 5 to 13. From his bank statements, I've seen that Mr L's monthly income varied

between about £1,600 and £2,000. His normal monthly living costs varied between about £500 and £750. But he had regular financial commitments and commitments to other short-term lenders. In addition, Mr L was gambling each month between about £500 and £850.

I think Lending Stream would've seen this picture if it had done proportionate checks. It would've recognised that Mr L wouldn't have any disposable income to repay its loans in a sustainable way – that is without further short-term borrowing. And Lending Stream wouldn't then have lent any amount to Mr L.

But it did make loans 5 to 13. And Mr L paid interest on them. Therefore I find it fair and reasonable to make orders in relation to those loans. I will order Lending Stream to refund each amount of interest and any charges Mr L paid. I will also order it to add interest at our usual rate. And – as I don't think it should've made those loans – I will order Lending Stream to remove from Mr L's credit file all adverse information relating to them.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I order Lending Stream LLC to (in relation to its loans to Mr L on and after 1 August 2011):

1. refund each amount of interest and charges that Mr L paid;
2. pay simple interest at a yearly rate of 8% on each such amount from the date Mr L paid it to the date Lending Stream refunds it. HM Revenue & Customs requires Lending Stream to take off tax from this interest. It must give Mr L a certificate showing how much tax it's taken off if he asks for one;
3. remove adverse information from Mr L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 December 2017.

Christopher Gilbert
ombudsman