

complaint

Mr N has complained about short-term loans granted to him by Lending Stream LLC ("Lending Stream" or "the lender"). Mr N says he couldn't afford these loans and he feels it was irresponsible of Lending Stream to have agreed them.

background

The background to the complaint was set out in my provisional decision dated 20 October, a copy of which is attached and forms part of this final decision.

In my provisional decision I set out why I was minded to uphold this complaint. I asked both parties to let me have their final submissions by the 3 November. Mr N let me know that he agreed with my provisional decision and I have not had a response from Lending Stream.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. As I haven't received any new information or arguments, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

fair compensation

In order to put this right, Lending Stream should:

- refund all interest and charges for all Mr N's loans from and including the fifth loan he took out in November 2011 to his final loan with it in July 2013.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr N's credit file.

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

my final decision

For the reasons set out in my provisional decision, I uphold this complaint and direct Lending Stream LLC to pay Mr N compensation as set out in the fair compensation section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 December 2016.

Michelle Boundy
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr N has complained about short-term loans granted to him by Lending Stream LLC ("Lending Stream" or "the lender"). Mr N says he couldn't afford these loans and he feels it was irresponsible of Lending Stream to have agreed them.

background

Lending Stream agreed 16 loans for Mr N between May 2011 and July 2013. These were all 'instalment loans' i.e. the capital and interest were repaid over several months. The amounts borrowed ranged from £85 to £555. Mr N made repayments in all but one of the months in this period. The lending terms overlapped at times so he often ended up making several loan repayments in any one month. His average monthly repayment totals were £214 in 2011, £215 in 2012, £293 in 2013, dropping to £42 in 2014 when he had agreed a repayment plan.

Lending Stream offered to refund the interest and charges on four of Mr N's loans. Mr N didn't accept this offer and brought his complaint to us. Our adjudicator recommended that Mr N's complaint be upheld and that Lending Stream refund the interest and charges he paid for more of his loans. But neither Lending Stream nor Mr N were happy with this view. So the complaint has come to an ombudsman for a final decision.

my provisional 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.

In making this decision I have considered whether Lending Stream did everything it should have when assessing Mr N's credit applications. And, following on from this, I have thought about whether any assessment failings resulted in Lending Stream agreeing to lend to Mr N when it should reasonably have known that it would be difficult for him to repay.

Lending Stream says it carried out all necessary checks before approving each loan for Mr N and on the one occasion when Mr N didn't meet its lending criteria it didn't agree to lend to him. The lender says that it asked Mr N about his income and expenditure each time he borrowed from it. It also says that it carried out a credit check each time and has provided some of the results of these checks, namely the number of active loans and Mr N's credit score (generated by the credit reference agency or CRA).

Lending Stream says Mr N had a high credit score. How Lending Stream judged the CRA credit score was up to it - different lenders might judge the same score differently depending on their internal lending criteria. The credit check results show that Lending Stream didn't see any defaults on Mr N's file and that he never had more than nine active loan accounts. And I have borne in mind that Lending Stream is entitled to rely on the information Mr N gave it about his income and expenditure. And so, altogether, I can't say that Lending Stream didn't carry out proportionate checks for Mr N's early loans.

Lending Stream says that Mr N had a good repayment history with it. And that offering Mr N multiple loans within a short timespan didn't indicate any financial difficulties, given that Mr N's disposable income was sufficient to meet the monthly repayments.

While I think that Lending Stream carried out proportionate checks early in Mr N's relationship with it, I disagree that Mr N's developing lending history did not indicate financial difficulties. Lending Stream acknowledges that it lends to people who need money for emergencies. It says *"We are a short term lending company, wherein our repayment scheme is based on monthly instalments depending on our customers' profiles. With that in mind, we help the customers who are in need of instant cash or emergency cash."* To paraphrase the guidance from the Office of Fair Trading, which is relevant to this time period, the purpose of short term loans is to act as short-term solutions to temporary cash flow problems. They are not appropriate for supporting sustained borrowing over longer periods.

loans agreed in 2011

In 2011 Mr N borrowed six loans from Lending Stream. He began his repayments on the 24 June for the first and second loans, on the 21 October for the third and fourth and on the 23 December for the fifth and sixth. The repayment schedules were such that from October to January Mr N was making repayments on four loans. Lending Stream has offered to refund Mr N's interest and charges for the second and fourth loans, saying *"that loans in quick successions might have made [Mr N's] circumstances difficult"*. I agree with this observation. And by this logic, the interest and charges for Mr N's sixth loan and several others would also be refunded.

However, I think Lending Stream could have enquired further into Mr N's circumstances before it agreed his fifth and sixth loans. It had agreed two loans for him in May and a further two in September. When he asked again for a loan in early November, with four existing loans, it could have considered whether or not Mr N's continued borrowing was indicative of an underlying inability to repay his loans sustainably. It might have, for example, asked again about this expenditure or asked to see his bank statements.

Mr N has provided bank statements which cover this period of lending. By September 2011, Mr N was repaying both long and short-term loans. While Mr N's stated monthly disposable income might suggest that he could afford his repayments to Lending Stream, his monthly credit commitments meant that this lending was unaffordable for him. In July, for example, in addition to his long-term loan repayments, Mr N repaid over £1,800 to short-term lenders. In August, his short-term lending repayments came to over £3,000. Had Lending Stream carried out what I consider to be proportionate checks when Mr N asked for his fifth loan in November, I think it would have learnt that this loan would be unaffordable for him. And that further lending to him would be unsustainable and therefore irresponsible.

loans agreed in 2012

Mr N took out four loans with Lending Stream in 2012 – two in June, one in October and one in December. As with his earlier loans, repayments for the first two and the last two ran concurrently. I think Lending Stream could have done more here to check that Mr N could afford to make these repayments, given that in June Mr N applied for his seventh loan (for £555) the month after he repaid his sixth, and applied again for another loan (for £315) within a week.

Mr N's circumstances hadn't improved when he came to borrow his seventh loan in mid-June 2012. In that month alone he repaid almost £2,000 to short-term lenders and had borrowed over £5,500. This continued throughout 2012, for example Mr N repaid almost £8,500 to short-term lenders in September and borrowed over £4,500 in October.

Mr N's financial circumstances fluctuated over the time he borrowed from Lending Stream. I can see from his bank statements that Mr N had a large deposit into his account in February 2012, which I understand was from a property sale. And he also received a large refund in September of that year, which appears to be from gambling funds. However, Mr N was spending regularly on gambling at a level which far exceeded his means and, it seems to me, eroded any additional capital he may have acquired. He was not managing to meet existing credit commitments in a sustainable manner, and further lending to him was, in my view, irresponsible. I think Lending Stream would have seen this, had it carried out what I consider would have been proportionate checks.

loans agreed in 2013

Mr N took out six loans with Lending Stream in 2013 – one in January, two in March, one in April and two in July. Again, the loan terms overlapped and Mr N ended up repaying over £800 in July. I think Lending Stream could have done more to inquire into Mr N's circumstances when he applied for a loan in early January 2013. He had applied for a loan only a few days prior to this, and his loan prior to that was still active.

Mr N's financial situation hadn't changed in 2013. He'd continued to borrow heavily from short-term lenders throughout this period, repaying about £2,500 in December 2012 and £5,500 in April 2013. Had Lending Stream enquired further into Mr N's ability to repay his loans in 2013, it would have learnt that they were unaffordable for him, due to his considerable existing credit commitments and his regular expenditure.

In early July, after taking out his 15th loan, Mr N contacted Lending Stream to say *"I have four loans with you currently. I am unfortunately experiencing some financial difficulties and would appreciate it greatly if I could set up some sort of repayment plan to repay these loans."* Lending Stream agreed a repayment plan for Mr N. It then agreed another loan for him in late July, the payments for which ran concurrently with his repayment plan for his previous loans.

summary

Mr N says of his borrowing from Lending Stream: *"The frequency and pattern of [my] borrowing is clearly symptomatic of someone who has spiralled into payday loan debt problems; re-lending straight after repaying, borrowing the maximum available amount, and experiencing problems in paying on time. All these factors illustrate clearly that the unaffordable lending criteria should apply to me."*

Having reviewed everything, I think Lending Stream should have done more to enquire into Mr N's ability to repay its loans when he applied for his fifth loan with it in November 2011. Had it done so it would have learnt that this loan was unaffordable because of Mr N's existing and ongoing credit commitments coupled with his regular expenditure. It would have seen that he could not repay further lending without continuing to borrow and so would have known that lending to him would have been irresponsible.

In order to put this right, Lending Stream should:

- refund all interest and charges for all Mr N's loans from and including the fifth loan he took out in November 2011 to his final loan with it in July 2013.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr N's credit file.

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

my provisional decision

I am minded to uphold Mr N's complaint and require Lending Stream LLC to pay him compensation as set out above.

I'll wait two weeks to see if either party has anything further to add – before considering my decision on this complaint once more.

Michelle Boundy
ombudsman