

## complaint

Mr H has complained about instatement loans he's taken with Lending Stream LLC (Lending Stream) between July 2011 and March 2013. Mr H says the loans weren't affordable so shouldn't have been given to him.

## background

Mr H had a total of 14 instalment loans. And a summary of Mr H's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date	largest monthly repayment	number contractual of repayments
1	£315.00	20/07/2011	25/01/2012	£94.50	6
2	£165.00	14/12/2011	25/05/2012	£49.50	5
3	£125.00	28/12/2011	25/05/2012	£37.50	5
4	£95.00	12/03/2012	25/06/2012	£28.50	4
5	£125.00	04/05/2012	25/09/2012	£37.50	5
6	£75.00	22/05/2012	25/09/2012	£22.50	4
7	£205.00	05/06/2012	23/11/2012	£61.50	6
8	£215.00	02/08/2012	31/01/2013	£64.50	6
9	£60.00	15/10/2012	23/01/2013	£18.00	4
10	£70.00	17/01/2013	25/04/2013	£21.00	4
11	£135.00	19/02/2013	25/07/2013	£40.50	5
12	£60.00	14/03/2013	25/06/2013	£18.00	4
13	£80.00	17/03/2013	25/06/2013	£24.00	4
14	£50.00	20/03/2013	25/07/2013	£15.00	4

An adjudicator looked at Mr H's complaint and she felt the checks carried out by Lending Stream before it gave Mr H his first loan went far enough. But the adjudicator didn't think the checks on the remaining loans were sufficient. But the adjudicator thought that had Lending Stream carried out proportionate checks, it would've seen that all borrowing from loan four wasn't affordable. So in order to resolve the complaint, the adjudicator recommended all interest and charges be refunded for loans 4 – 14.

Lending Stream didn't agree with the adjudicator's recommendation. In response it made a number of points, including;

- Mr H displayed a good credit history, but the credit file Lending Stream had access to (as a lender), may not have shown all the information Mr H could see on his report,
- Mr H needed to declare all of his expenditure and the information he provided showed he had enough disposable income to be able to afford the loans,
- Lending Stream wasn't required to obtain copies of Mr H's bank statements and
- Mr H didn't show signs of continuous borrowing or financial hardship.

But in response to the adjudicator's assessment, Lending Stream made an offer to settle the complaint. It agreed to refund the interest and charges, pay 8% simple interest and remove any adverse information recorded on Mr H's credit file for loans 3, 6, 7, 13 and 14. However, Mr H didn't accept the offer, so the case has been passed to me for a final decision. But as Lending Stream has made the above offer, I won't be looking at those loans 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. And having so, I'm partly upholding Mr H's complaint and I've explained my reasons below.

All of the loans Lending Stream gave Mr H were instalment loans. So this means, the checks Lending Stream needed to carry out, had to show that Mr H could sustainably afford to repay the instalment as and when they became due – without it impacting on his financial position.

Lending Stream had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules don't set out what checks must be done before lending is approved – but this is a customer focused test. However, Lending Stream needed to conduct enough checks to make sure the loan was affordable for Mr H. And these checks needed to be proportionate to a number of things, such as the size of the loan and when the loan was due to be repaid.

But even the checks Lending Stream carried out weren't proportionate, that alone doesn't mean Mr H's complaint should be upheld. I say this because, it's possible, that had further checks been carried out by Lending Stream they would've shown that Mr H was able to afford the loans. So Lending Stream wouldn't have been wrong to lend him the money.

Lending Stream says it carried out a number of credit and affordability checks before it agreed to lend to Mr H. It says on each occasion, it carried out a credit check and its decision to lend was based on Mr H's score as well as the income and expenditure information he provided.

Lending Stream says that based on the information it gathered about Mr H, it was reasonable to lend to him because its assessment showed he could afford the loan repayments. But I've thought about what Lending Stream says and Mr H's circumstances at the time each loan was approved. And having done so, I don't think the checks Lending Stream carried out were proportionate for some of the borrowing.

Mr H took out his first two loans with Lending Stream in July and December 2011 for £315 and £165 respectively. Lending Stream says it carried out proportionate checks for both loans by completing a credit check, as well as asking Mr H about his regular income and expenditure and it's provided a record of the figures it took from Mr H at the time of each loan was approved. But Lending Stream hasn't been able to provide the results of the credit check.

Lending Stream has shown us that Mr H declared his income to be nearly £1,400 when he applied for the first two loans and he also gave details of his outgoings. And taking into account the repayments that needed to be made for both loans Lending Stream would've most likely have seen that he had enough disposable income to meet his repayments. So I won't be making an award for these loans.

As I mentioned above, Lending Stream has already agreed to refund loan three, so I won't be looking at this loan in the decision.

Mr H's fourth loan was taken out after loan one had been repaid but loans two and three were still outstanding. The amount he borrowed hadn't increased but the amounts Mr H had declared for his loans up to this point had fluctuated, even though his income remained broadly similar. However, Mr H wasn't borrowing each month, so it's possible his circumstances may have changed – which led to the change in his outgoings. But having considered Mr H's outstanding loan repayments as well as the number of loans he'd taken, I think Lending Stream's checks needed to go further.

I think by now Lending Stream needed to have a more thorough understanding of Mr H's financial position. Lending Stream could've done this a number of ways, such as asking to see evidence of Mr H's income and outgoings or it could've asked to see his bank statements, as I've done here.

Mr H's bank statements may not have shown everything that Lending Stream's proportionate checks would've shown. But the statements are the best indication I have of Mr H's affordability at the time the loan was approved, so I don't think it's unreasonable to rely on the statements.

Having looked at Mr H's bank statements, I don't think he had the ability to repay this loan. While the monthly income Lending Stream has recorded is broadly correct it's clear from the statements that Mr H was borrowing from other payday lenders. And when Lending Stream approved the payday loans Mr H was regularly spending more than his income each month – with a majority of his expenditure going towards repaying these other payday loans. Mr H was also spending significant amounts of his income each month gambling. And I think that had Lending Stream undertaken proportionate checks this would've been bought to its attention and it wouldn't have lent to Mr H.

For all remaining loans, I still think Lending Stream should've had a full picture of Mr H's financial position. He continued to borrow and at times had up to five outstanding loans with Lending Stream. And Lending Stream ought to have already been aware of Mr H gambling and that he was borrowing from a number of other short term lenders. So for all remaining borrowing, I still think proportionate checks should've included carrying out a full finance review.

And I can see that Mr H's financial position doesn't change after the fourth loan. He continued to borrow from other short term lenders and he was also regularly spending a significant portion of his income each month on gambling. So if Lending Stream had carried out proportionate checks, it would've seen that Mr H wasn't in a position to repay his loans sustainably. And as a responsible lender, it shouldn't have approved this loan, or any of the subsequent loans, once it realised this.

### **how I propose Lending Stream should do to put things right**

To put things right for Mr H, Lending Stream should:

- refund all the interest and charges paid by Mr H on loans 3 - 14 ,
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr H's credit file because of these loans.

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

### **my final decision**

For the reasons given above, I partly uphold Mr H's complaint.

Lending Stream LLC should pay Mr H compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 September 2017.

Robert Walker  
**ombudsman**