

complaint

Mr W complains that Lending Stream LLC gave him loans that he couldn't afford to repay.

background

Mr W was given eight loans by Lending Stream between August 2016 and November 2016. Each of the loans was repayable in six monthly instalments, but Mr W usually repaid the loans within a few days of taking them. Mr W successfully repaid his first seven loans but a balance still remains on the final loan. A summary of his borrowing from Lending Stream is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	18/08/2016	18/08/2016	£ 50
2	15/09/2016	23/09/2016	£ 400
3	29/09/2016	11/10/2016	£ 100
4	13/10/2016	17/10/2016	£ 200
5	21/10/2016	03/11/2016	£ 200
6	24/10/2016	03/11/2016	£ 140
7	06/11/2016	19/11/2016	£ 660
8	19/11/2016	-	£ 190

When Mr W first complained to Lending Stream it offered to reduce the outstanding balance on his final loan so he only needed to repay the amount he'd borrowed – not any interest or charges. But it didn't think it had been wrong to give Mr W any of the loans. Mr W didn't accept that offer so he brought his complaint to this Service.

Mr W's complaint has been assessed by one of our adjudicators. He thought that Lending Stream had done enough checks before agreeing the first four loans. But he thought Lending Stream should have done more checks before the rest of Mr W's loans. And he thought that better checks would have shown Lending Stream that Mr W couldn't afford to repay those loans. So he asked Lending Stream to pay Mr W some compensation.

Lending Stream hasn't responded to that assessment so the complaint has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr W accepts my decision it is legally binding on both parties.

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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

The Financial Conduct Authority was the regulator at the time Mr W borrowed from Lending Stream. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit*

agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.” - CONC 5.3.1(2). CONC 5.3.1(7) defines ‘sustainable’ as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments. The checks needed to be proportionate to things such as the amount Mr W was borrowing, and his lending history, but there was no set list of checks Lending Stream had to do.

The fact that the amounts borrowed and the interest paid might have been low in comparison with Mr W’s income, or that he managed to repay most of the loans in full and before their due date, doesn’t necessarily mean the loans were affordable for him and that he managed to repay them in *a sustainable manner*. In other words I can’t assume that because Mr W managed to repay most of his loans that he was able to do so out of his normal means without having to borrow further.

Lending Stream has told us about the checks that it did before lending to Mr W. It asked him for details of his income, and normal expenditure, before each loan. And it checked his credit score with a credit reference agency each time.

I think that these checks were proportionate for the first four loans that Mr W took. Although Lending Stream should have become increasingly concerned about what it knew about Mr W over the course of these loans, given the frequency of his borrowing and repayments, I don’t think that is enough for me to conclude greater checks were needed. The amounts Mr W borrowed and his repayments were relatively modest compared to the disposable income he’d declared to Lending Stream. I think it was reasonable for Lending Stream to conclude, based on the information Mr W had provided, that he would be able to afford his repayments on these loans.

When Mr W asked for his next loan, that was his fifth request in the space of two months. I think it had now reached the point where it would have been reasonable for Lending Stream to question whether it could rely on the information Mr W was providing about his finances. The loans he was taking were due to be repaid over a period of six months, but the longest period Mr W kept any of his first four loans was just 12 days. I think that might have suggested that Mr W wasn’t managing his finances in a proper manner. I think by this stage Lending Stream should have been independently verifying the information Mr W was providing about his finances.

But although I don’t think the checks Lending Stream did from loan 5 onwards were sufficient, that in itself doesn’t mean that Mr W’s complaint should succeed. I’d also need to be persuaded that what I consider to be proportionate checks would have shown Lending Stream that Mr W couldn’t sustainably afford the loans. So I’ve looked at Mr W’s bank statements, and what he’s told us about his financial situation, to see what better checks would have shown Lending Stream.

The problems that Mr W faced with his finances at the time he was borrowing from Lending Stream were caused by him suffering from a gambling addiction. That meant that in the latter part of 2016 he was spending significantly more than his income each month on gambling transactions. And to fund this expenditure Mr W was borrowing from Lending Stream and several other short term lenders.

I think that if Lending Stream had done what I consider to be proportionate checks, from loan 5 onwards, the true state of Mr W's financial problems would have been clear. And these checks would have shown that Mr W wasn't able to sustainably afford any additional lending. So, as a responsible lender, I don't think that Lending Stream would have agreed to lend to Mr W at that time. It follows that Lending Stream needs to pay Mr W some compensation.

putting things right

I don't think Lending Stream should have agreed to lend to Mr W after, and including, the loan that he took on 21 October 2016 (loan 5). So I require Lending Stream to;

- A. calculate how much Mr W paid as interest and charges on those four loans. To each of these sums, it must add 8% simple interest a year*, from the date Mr W paid them to the date of settlement.
- B. remove all the interest and charges that haven't yet been paid in respect of loan 8 from the outstanding balance. If there is still a principal balance left owing, Lending Stream may apply the sum calculated in "A" above to reduce that principal balance.

If, after the sum in "A" has been applied against the principal balance outstanding, there is still a sum outstanding, Lending Stream should seek to arrange a mutually agreeable repayment plan with Mr W bearing in mind the need to treat him positively and sympathetically.

If however, the refund amount covers the entire principal and some refund is left over, the remaining amount of refund should be paid to Mr W.

- C. remove any adverse entries relating to these loans from Mr W's credit file.

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

my final decision

My final decision is that I partly uphold Mr W's complaint and direct Lending Stream LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 December 2017.

Paul Reilly
ombudsman