

complaint

Mr C complains that Lending Stream LLC gave him eleven loans he couldn't afford to repay. He's also unhappy with how frequently they contacted him after he'd taken out the loans. Mr C feels that their text messages and emails were excessive and eventually made him feel ill.

background

The loans were taken out between October 2012 and September 2013 for amounts ranging from £75 to £305. In response to the complaint, Lending Stream have said that they completed credit checks before giving Mr C the loans and that the information he provided to them indicated he had enough in disposable income to afford them. Lending Stream did offer to refund Mr C the interest and fees he paid on loan two and on loans 8 to 11. They say a procedural error occurred when they approved loan two and that Mr C had made them aware he was having financial problems by the time he took out loan 8. Mr C didn't initially accept any of these offers.

Our adjudicator investigated the complaint. She didn't think there was a problem with Lending Stream providing Mr C with loans one, three and four but she did think they should have done more to check the remaining loans were affordable. From the evidence, she reached the view that if they had done better checks, Lending Stream would have seen that Mr C didn't have a sustainable way of repaying the money he was requesting. Also, based on what she'd seen, our adjudicator thought some of the messages sent to Mr C chasing him for payment were sent at unreasonable times. So she recommended that Lending Stream pay Mr C compensation for the trouble and upset caused by some of these messages. She also recommended that they refund him the interest and fees he had paid on loans five to eleven.

Lending Stream doesn't agree with this opinion so the complaint has been passed to me. Mr C has recently accepted Lending Stream's offer to refund him the fees and charges he paid on loan two along with interest. As a result, I haven't looked into what happened when he was granted this loan.

my findings

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

The rules and guidance applicable to short term lending at the time Mr C was granted the loans, required Lending Stream to lend to him responsibly. This meant that before giving Mr C the loans, Lending Stream had to make sure he could afford to repay them. There was no set list of checks they had to perform, but any checks needed to be proportionate to factors like the size of the loan and Mr C's circumstances.

The first four loans I've considered; one, three and four were for £305, £125 and £115. They were taken out in October 2012, December 2012 and January 2013 respectively. Like our adjudicator I don't think there was a problem with Lending Stream providing these loans to Mr C. The checks they completed seem sufficient bearing in mind the amounts Mr C was asking to borrow. Lending Stream have provided evidence to show they found out how much Mr C earned, what his outgoings were and that they completed a credit check when he applied for the loans. The results of these checks indicated that Mr C could afford the loans and that his finances were being managed.

Mr C applied for loan five (£115) in January 2013. It's at this point that I think Lending Stream needed to know more about Mr C's situation. Loan five was taken out in the same month as loan four while the balance of loan four was still outstanding. Also, the result from the credit check they completed when Mr C took out this loan showed that he now had a delinquent account. Previously no delinquent accounts were recorded. The quick take up of a new loan along with the results from their own credit check pointed to the possibility that Mr C may have been having some problems with his finances. In turn, I think this should have prompted Lending Stream to complete more checks.

There wasn't anything specific Lending Stream needed to do but one step they could have taken to understand what Mr C could afford was to look at his bank statements. I've done this and can see that within the period Mr C took out loan five, he had very little in disposable income and not enough to enable him to sustainably repay the money he had asked to borrow. He was paying over £500 to a variety of payday lenders, but the real issue related to gambling – In December 2012 Mr C spent about £1,376 on gambling and in January 2013 (the month he took out loan five) this amount had nearly doubled and Mr C had spent £2,102. Had Lending Stream completed more checks, I think they would have discovered that Mr C couldn't sustainably repay the loan.

Mr C took out loans six to eleven between February 2013 and September 2013. Lending Stream asked Mr C about his income and expenditure when he took out these loans but I still think they needed to know more. The frequency of his borrowing remained concerning as his loan statements show he was borrowing money from Lending Stream nearly every month.

I've again considered Mr C's bank statements. His situation hadn't improved when he took out loans six to eleven. The money he was spending on gambling and paying to other credit providers continued to outweigh the money he was receiving in income. From what I've seen better checks would have flagged that Mr C couldn't afford to sustainably repay loans six to eleven and that giving him more money wasn't responsible.

Mr C repaid all his loans to Lending Stream but there were times when his payments were late. Lending Stream contacted him when he hadn't paid as they were entitled to do. But I think there were times when they sent Mr C too many messages and at unreasonable hours. In April 2013 for example, Lending Stream appear to have contacted Mr C over 15 times in 1 hour after 11pm. Similar multiple messages were sent to Mr C on other occasions - usually after 11pm and sometimes as late as 1.45 am. Guidance applicable at the time the messages were sent outlined that lenders should act fairly and reasonably when dealing with customers. Later guidance published in the FCA Consumer Credit Sourcebook (CONC) states that lenders mustn't contact customers at unreasonable times. So while I don't think it was an issue for Lending Stream to contact Mr C if he hadn't paid what he owed them, I think sending multiple messages late at night wasn't reasonable.

Mr C has said receiving these messages upset him and I can understand why. In the particular circumstances of Mr C's complaint, I think it's fair that Lending Stream compensate him for the upset caused to him through being sent the automated messages late at night.

putting things right

Based on what I've seen, I don't think Lending Stream should have provided Mr C with loans five to eleven nor should they have sent him multiple missed payment messages late at night. Additionally, they have already made Mr C an offer in relation to loan two which he has accepted. So Lending Stream should:

- refund all interest and charges added to loans two, five, six, seven, eight, nine, ten and eleven;
- pay interest at 8% simple per year on any refund from the date of payments to the date of settlement†;and
- remove any negative information about those loans from Mr C's credit file
- Pay Mr C £100 compensation for the trouble and upset he was caused by being sent the missed payment messages late at night.

†HM Revenue & Customs require Lending Stream to take off tax from the 8% interest they pay him. Lending Stream must give Mr C a certificate showing how much tax it's taken off if he asks for one.

my final decision

I partly uphold Mr C's complaint against Lending Stream LLC and direct that they pay him compensation as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 January 2017.

Tope Adeyemi
ombudsman