Financial Ombudsman Service

complaint

Mr R has complained about loans granted to him by Lending Stream LLC. He's said they were unaffordable for him.

background

Lending Stream says it agreed 22 loans for Mr R during the period October 2011 to June 2016. The following table summarises some of the information Lending Stream provided about these loans:

Loan number	Borrowed Date	Date repaid	Amount
1	25/10/2011	28/10/2011	£515
2	31/10/2011	01/11/2011	£615
3	18/11/2011	22/02/2012	£495
4	03/02/2012	22/06/2012	£735
5	04/04/2012	23/04/2012	£355
6	19/05/2012	14/09/2012	£945
7	26/09/2012	06/10/2012	£515
8	13/12/2012	31/12/2012	£415
9	16/05/2013	24/06/2013	£515
10	26/06/2013	20/08/2013	£985
11	21/08/2013	14/09/2013	£750
12	08/01/2014	01/02/2014	£750
13	23/04/2014	23/05/2014	£600
14	27/05/2014	03/06/2014	£600
15	22/08/2014	15/09/2014	£500
16	21/09/2014	19/12/2014	£500
17	27/02/2015	15/04/2015	£280
18	23/10/2015	26/10/2015	£500
19	15/01/2016	20/01/2016	£500
20	30/03/2016	23/04/2016	£280
21	29/04/2016	28/06/2016	£420
22	29/06/2016	29/06/2016	£520

Mr R says Lending Stream should've realised the loans it gave him were unaffordable. He says he was experiencing severe financial difficulties during this period. He had a serious gambling problem which had caused him to fall into debt with many of his creditors – including several other short term lenders.

One of our adjudicators looked into his complaint, and said she thought the checks Lending Stream carried out on the first two loans would've been proportionate, if he'd given different information. But based on the information Mr R gave, she thought it should've seen both loans were unaffordable. She went on to say that after the second loan, Lending Stream should've carried out more in depth checks. And after looking at Mr R's circumstances at the time of each loan, she thought that none of the subsequent loans were affordable for Mr R. So she said Lending Stream should refund the interest and charges on all of the loans, including paying interest on those charges, to put things right.

Lending Stream disagreed with our adjudicator's assessment. It said it did carry out proportionate checks in line with the regulatory requirements of the time. It says it checked Mr R's credit file before approving each loan, as well as asking Mr R about his income and expenditure. However, Lending Stream made an offer to Mr R in an attempt to reach a full and final settlement of his complaint. It offered to refund the interest and charges for loans 2, 15 and 20. But Mr R didn't want to accept Lending Streams' offer, so the complaint has been passed to me for a 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Based on everything I've seen I don't think Lending Stream did enough to ensure Mr R could afford to repay the first two loans. The information Mr R gave at the time suggested he didn't have any disposable income. So I think it should've either declined these loans, or carried out more detailed checks before agreeing to lend. For the following 20 loans the information Mr R gave Lending Stream indicated that he did have a disposable income. But I still think Lending Stream should've carried out more detailed checks than it did for these loans. And if it had, I think it would've seen that Mr R couldn't afford to repay any of the loans he took. I'll explain why in more detail.

At the time of Mr R's earlier loans, Lending Stream was regulated by the Office of Fair Trading ("OFT"). But some of his later loans were taken after 1 April 2014, which is when the Financial Conduct Authority ("FCA") took over as the regulator.

There was no set list of checks that either regulator required Lending Stream to complete before lending. But both required it to lend responsibly, which means it needed to check that Mr R could afford to repay his loans sustainably. These checks needed to be proportionate, and might include considerations about the amount borrowed, the associated cost and risk to Mr R, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

The guidance clearly states that meeting repayments in a sustainable manner means repaying credit out of existing income and/or savings while also meeting other debt repayments and normal outgoings. And it lists examples of sources of information to assess affordability – these include: record of previous dealings with the borrower, evidence of income, evidence of expenditure, a credit score, a credit report from a credit reference agency and information obtained from the borrower.

Mr R took out his first two loans with Lending Stream in October 2011 for £515 and £615 respectively. Lending Stream says it carried out proportionate checks for both loans by completing a credit check, as well as asking Mr R about his regular income and expenditure. It's provided a record of the figures it took from Mr R at the time of each loan. But it hasn't been able to provide the results of the credit check. Mr R has provided a copy of his credit report himself, but Lending Stream says a credit search completed by an individual on themselves will show more detailed results than one a business might run. So taking everything into account, I've thought about what information I think Lending Stream is likely to have seen on its credit report, where appropriate.

Lending Stream says Mr R's stated income at the time of the first two loans was around £3,000 per month. But Mr R told Lending Stream that his regular expenditure was equal to his income when applying for loans 1 and 2. In other words, he said he had no disposable income with which to repay these loans. So I think this should've prompted Lending Stream to decline his loan requests, or at the very least do more detailed checks. And if it had, I think Lending Stream would've seen the poor state of Mr R's finances and not agreed to give him these loans.

Mr R took out his third loan around two weeks after he withdrew from the second loan. It was for a slightly smaller amount than the first loans – £495. At this stage Lending Stream says that Mr R gave his expenditure as £1,500 per month, which was around half as much as he'd said it was two weeks earlier. There was also a reduction in the credit score it saw for Mr R.

Because Mr R was reporting such a significant change in expenditure, in such a small amount of time, I think Lending Stream should've carried out further checks to verify the information he was giving was accurate. It could've done this by asking for evidence of Mr R's regular bills, or by asking for his bank statements. I also think it would've been appropriate to ask Mr R about any other short term lending commitments as he'd now requested three loans in quick succession. And I note that Mr R's credit report shows he was borrowing from other short term lenders. So I think it's more likely than not that the credit check Lending Stream completed would've showed some indication of this too.

Lending Stream says that the regulator doesn't recommend or require lenders to ask consumers for bank statements. And I accept this is the case. But as I've already outlined, the guidance does suggest that businesses might need to request evidence of expenditure when assessing affordability. And at this stage I think that would've been appropriate for Lending Stream to request some form of evidence from Mr R.

Based on what I've seen of Mr R's circumstances at the time of this loan, the figure he gave Lending Stream for his income was fairly accurate. However, he had several other large debts he needed to repay, including debts to other short term lenders. And taking those expenses into account, alongside his regular living costs, he wouldn't have been able to afford the repayment on this loan. So, had Lending Stream carried out proportionate checks, I think it would've discovered this, and as a responsible lender, I don't think it would've agreed to lend.

As Lending Stream would've been aware of Mr R's accurate expenditure and his other short term lending by the time of the fourth loan, I think it would've been responsible and proportionate for it to continue completing more detailed checks moving forward. I say this because I'm sure it would've wanted to check his circumstances had improved before agreeing to lend again. And based on what I've seen, if Lending Stream had continued with more detailed checks, it would've seen that Mr R wouldn't have been able to afford the repayments on this loan, after paying his regular expenses and other short term lending commitments.

Mr R applied for his fifth loan in April 2012, while he was still making repayments on his fourth. Mr R had now borrowed five times within a period of five months, and Lending Stream should've also been aware that he was borrowing from other short term lenders. So there was an indication that might've been becoming dependent on short term credit. Because of this, I think it would've been proportionate for Lending Stream to build a full picture of Mr R's circumstances before agreeing to lend again.

From what I've seen of Mr R's circumstances after his fourth loan, he continued to borrow from short term lenders. And he was also regularly spending very large sums of money on gambling. So if Lending Stream had carried out proportionate checks, it would've seen that Mr R 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. I say this because Mr R continued to spend more than his regular income on gambling throughout the time of his borrowing.

I've considered the fact that there was a gap of around six months between Mr R repaying loan 17 and taking loan 18. But given Mr R's particular circumstances, I don't think it would've been reasonable for Lending Stream to assume this was enough time for his situation to have improved. I say this because he had a history of dependency on short term credit, and of a severe gambling problem. So I think it would've been proportionate for Lending Stream to build a full picture of his circumstances before approving loan 18, and the subsequent loans – to be sure his situation had sufficiently improved. And again, if it had, it would've seen that Mr R's situation hadn't improved, and that the remaining loans weren't affordable for him either.

It follows that I think Mr R has lost out because of what Lending Stream did wrong.

what Lending Stream should do to put things right

Lending Stream should:

- refund all interest and charges for each loan (including any late fees and default interest).
- pay interest on this refund at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr R's credit file.

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

my final decision

For the reasons I've explained I uphold Mr R's complaint in full. Lending Stream LLC should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 31 July 2017.

Adam Golding
ombudsman