

The complaint

Mr N complains that Gain Credit LLC (trading as Lending Stream) lent to him in an irresponsible manner.

What happened

Mr N was given six loans by Lending Stream between April and June 2018. He says it didn't do adequate affordability checks before giving him the loans. Loans 3 to 6 have an unpaid balance, which Lending Stream sold to a debt collection agency.

Our investigator looked into Mr N's complaint. He said Lending Stream shouldn't have given loans 5 and 6 to Mr N. So he asked it to pay Mr N some compensation.

Lending Stream offered to refund interest and charges for loan 6 only. Mr N said he thought loan 4 was also lent irresponsibly. He says Lending Stream gave him loans in quick succession, without affordability checks. He says he was in a vulnerable position.

As the parties didn't agree, the complaint has been passed to me.

What I've decided – and why

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

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Lending Stream needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure that Mr N could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Lending Stream should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the lower a customer's income (as it could be more difficult to make any loan repayments from a lower level of income);
- the higher the amount due to be repaid (as it could be more difficult to meet a higher repayment from a particular level of income);
- the greater the number and frequency of loans, and the longer the period during which a customer has been given loans (as repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think it's important for me to say that Lending Stream was required to establish whether Mr N could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication Mr N could sustainably make his repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr N's complaint.

Lending Stream did some checks before it lent to Mr N. It asked him for details of his monthly income, which he said was about £2,000, and his normal expenditure. The information Mr N provided suggested the loan repayments were affordable.

Lending Stream was aware from its credit check that Mr N had defaulted and delinquent accounts. However, the defaults had been recorded more than four years before and there'd been about 18 months since the most recent delinquent account. Lending Stream was also aware that Mr N had other credit commitments and that the expenditure he declared (he said his monthly credit commitments were £75 when he applied for loan 2 and £25 when he applied for the later loans) was unlikely to be correct. It says it increased Mr N's expenditure to take account of what knew from its checks, and still assessed the repayments as affordable.

Each of Mr N's loans was repayable over a six-month period. So the amounts that Mr N needed to repay each month were smaller than if he'd taken a normal payday loan. But of course, he had to making those repayments over a longer period. And Mr N had several loans outstanding together. So I have to consider the total amount that Mr N needed to repay to Lending Stream each month.

I think the checks Lending Stream did before agreeing the first four loans were proportionate. The amounts that Mr N needed to repay were small compared with the disposable income he'd declared. Mr N says Lending Stream should have made more checks before loan 4, as he was vulnerable. I've considered what he's said, but I don't think Lending Stream would, at this point, have known this.

Given the repayment amounts, what was apparent about Mr N's circumstances at the time, and his borrowing history with the lender, I don't think it would have been proportionate for Lending Stream to ask him for the amount of information that would be needed to show the lending was unsustainable before agreeing the first four loans.

I do think, by the time Mr N asked for loan 5, that Lending Stream should have realised that it couldn't safely rely on the information he was providing about his finances. This was his fourth loan in an eight-day period, two of which were outstanding. The amounts of loans 3 to 5 increased each time (£150, £170 and £440 respectively).

I think Lending Stream should have taken steps at that time, and before any subsequent loans, to independently verify Mr N's true financial position.

Mr N provided copies of his bank statements for June 2018, which was when he took out loans 2 to 6. This shows a significant number of payments to gambling businesses. I think if Lending Stream had made proportionate checks before loan 5 it would have been alerted to the possibility that Mr N had a problem with gambling and that further lending was unsustainable, or possibly harmful. It would have known not to offer him further loans.

Putting things right

I don't think Lending Stream should have agreed to lend to Mr N after, and including, the loan he was given on 16 June 2018 (loan 5). So it needs to put things right.

Lending Stream says it sold the outstanding debts. It should buy these back if it's able to do so and then take the following steps. If Lending Stream isn't able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below. It should then:

- refund all the interest and charges Mr N paid on loans 5 and 6.
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†.
- remove any interest and charges still outstanding on loans 5 and 6 and treat all the payments Mr N made towards these loans as payments towards the capital.
- if reworking Mr N's loan accounts as I've directed results in Mr N effectively having made payments above the original capital borrowed, then Lending Stream should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.
- if reworking Mr N's loan accounts leaves an amount of capital still to be paid, then Lending Stream can use the total refund for loans 5 and 6 (after the deduction of tax) to offset this.
- remove any adverse information it's recorded in relation to loans 5 and 6 from Mr N's credit file.

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

My final decision

My decision is that I uphold this complaint and order Gain Credit LLC to take the steps and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 5 August 2020.

Ruth Stevenson
Ombudsman