

The complaint

Mr D complains that Gain Credit LLC (trading as Lending Stream) lent to him irresponsibly.

What happened

Mr D took out a total of four loans with Lending Stream between January and May 2018.

Loan no.	Date borrowed	Amount	Date repaid
1	17.01.18	£100.00	19.01.18
2	28.01.18	£150.00	19.02.18
3	04.03.18	£100.00	-
4	27.05.18	£100.00	-

Each of the loans was due to be repaid by 24 weekly instalments. Mr D repaid the first two loans well ahead of schedule. But he fell behind with his payments on loans 3 and 4 and balances remained outstanding on those two loans when Mr D brought his complaint to us.

Mr D believes that Lending Stream was irresponsible to lend to him, and that it didn't carry out sufficient checks to make sure that he would be in a position to repay the loans.

Our adjudicator thought the complaint should be upheld in part. In summary, she didn't think Lending Stream had been wrong to make the first three loans. But by the time Mr D applied for loan 4, she thought that proportionate checks would have revealed that Mr D was having problems managing his money. So she didn't think Lending Stream should have agreed to make loan 4. And she said it should pay Mr D some compensation and make some changes to his credit file.

Mr D disagreed with the adjudicator's view, so the complaint's 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 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 D 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. With this in mind, 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 (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the higher the amount due to be repaid (reflecting that 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 of time during which a customer has been given loans (reflecting the risk that 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 that it's important for me to start by saying that Lending Stream was required to establish whether Mr D 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 a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and, in particular, 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 D's complaint. Having done so, I've reached the same conclusion as the adjudicator, and for broadly similar reasons.

Lending Stream has told us about the checks it carried out before making the loans. It asked Mr D for details of his monthly income and expenditure. And it carried out a credit search before making each loan. I've seen a summary of the results of those searches, and they don't contain anything which I think should have caused concern to Lending Stream.

As I mentioned earlier, each of Mr D's loans was repayable in instalments. So the amounts that he needed to repay each time were smaller than if he'd taken a normal payday loan. But of course he was committing to making those repayments over a much longer period.

I think the checks that Lending Stream carried out before making the first three loans were proportionate. The amounts that Mr D needed to repay were small compared with the income he'd declared. And it would have looked as if Mr D would be able to afford the loan repayments relatively comfortably, based on what he'd told Lending Stream about his normal monthly expenditure.

Lending Stream was entitled to rely on the information Mr D had provided, in the absence of anything to suggest that it might be unreliable. Given the repayment amounts, what was apparent about Mr D's circumstances at the time, and his borrowing history with Lending Stream, I don't think it would have been proportionate for Lending Stream to ask Mr D for the amount of information that would have been needed to show that the lending was unsustainable. So I don't think Lending Stream was wrong to make the first three loans to Mr D.

Loan 4 was the fourth time Mr D had applied to borrow from Lending Stream in just over four months. His declared monthly expenditure remained roughly as it had been when he'd applied for his previous loans. But his declared monthly income was significantly lower. And loan 3 was still open. Taking everything into account, I think it ought to have occurred to Lending Stream at this stage that Mr D might be struggling financially. And I think that at this stage Lending Stream ought to have taken steps to verify the information that Mr D had provided independently.

I've looked at Mr D's bank statements to see what I think it's likely that proportionate checks would have shown Lending Stream. And I think that if it had looked into Mr D's financial situation as thoroughly as it should have done, it would have discovered that he already had outstanding short-term loans with several other lenders. So I think Lending Stream should have realised at this point that it was likely that Mr D was having significant problems managing his money. And I don't think it should have agreed to make loan 4.

Putting things right

Although Mr D made some repayments on loans 3 and 4 to Lending Stream, the amount he repaid wasn't enough to cover the principal sum that he'd borrowed. It looks as if that debt may now have been sold to a third-party debt collection company. If so, I don't know whether Mr D has repaid any of this debt to the debt collection company.

It seems reasonable that Mr D should repay the capital that he borrowed. But because I've found that Lending Stream shouldn't have made loan 4, I don't think he should repay any of the interest or charges that were added to that loan.

So Lending Stream should take the outstanding debt back into its own books. It should reduce the balance on loan 4 to reflect just the capital that Mr D borrowed, less any repayments he has already made. And it should then attempt to reach a mutually agreeable repayment arrangement with Mr D for the remaining debt, bearing in mind the need to continue to treat him positively and sympathetically in those discussions.

If Lending Stream has sold the debt to a debt collection company and is unable, or unwilling, to take the debt back into its own books it must ensure that its interest and charges, and any other interest and charges added by the debt collection company, are refunded directly to Mr D so he can choose whether to use the compensation to reduce his debt directly.

Lending Stream should remove any negative information about loan 4 from Mr D's credit file once the remaining principal debt has been repaid.

Mr D is currently in an IVA. His IVA practitioner has confirmed that they have an interest in any redress. It is Mr D's responsibility to comply with the terms of the IVA.

My final decision

My decision is that I uphold this complaint in part. I require Gain Credit LLC (trading as Lending Stream) to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 31 July 2020.

Juliet Collins
Ombudsman