DRN-1933102

Complaint

Mr B has complained about a number of loans he took out through a company called Gain Credit LLC, trading at the time as Lending Stream. Mr B says he was lent to irresponsibly and the loans caused him financial problems.

To keep things simple I'll refer mainly to "LS" throughout this decision.

Background

We now know that Mr B took out some 14 instalment loans from LS between May 2016 and June 2019. I've enclosed a summary of Mr B's borrowing with LS, based on the information it provided to us. It can be found in the appendix at the end of this decision.

One of our adjudicators looked into the complaint and said they thought it should be upheld from the point of loan number 5 onwards. LS doesn't agree to this so the complaint has come to me for an ombudsman's final 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. 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. I've followed this approach when thinking about Mr B's complaint.

LS 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 B could repay all the loans he was given in a sustainable manner. These checks ought to have taken into account a range of different factors, such as the amounts being lent, the total 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. However, certain factors might point to the fact that LS should have fairly and reasonably done more to establish that any lending was sustainable for the 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 or pattern of lending itself clearly demonstrates that the lending was unsustainable. So, LS was required to establish whether

Mr B could sustainably repay the loans; not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan being affordable on this basis *might* be an indication that Mr B could sustainably make the repayments. But it doesn't automatically follow that 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. So, it follows that a lender should realise, or it ought to have fairly and reasonably realised, that a borrower won't be able to make their repayments sustainably if they are unlikely to be able to make them without borrowing further.

LS told us it carried out certain affordability and credit checks before agreeing to lend to Mr B. I've thought about this and I've also looked at the overall pattern of lending history with a view to seeing if there was a point at which LS should reasonably have seen that further lending was unsustainable, or otherwise harmful. I've considered whether, at some point, LS should have realised that it shouldn't have provided any further loans.

Bearing in mind what I've said above, about the length of the lending relationship, I think the checks which LS most likely carried out would have been quite basic ones. But I also think these would have probably been proportionate for loan numbers 1 – 4. I think these levels of checks, together with the income and expenditure details provided by Mr B himself, would have made those particular early loans appear affordable, even though I completely accept Mr B may have already had some financial challenges.

However, I think the emerging pattern of repeated lending from the point of loan 5 onwards in this case would have looked different and therefore required a more responsible approach. The overall pattern of LS's lending to Mr B at the point of loan 5 should have caused it to see, in my view, that it shouldn't have provided any further loans.

This is because this was Mr B's fifth short-term loan application with LS in 19 months or so without any meaningful break. I've taken into account what LS has said about enhancing certain background checks as time went on, to ensure the borrowing was still affordable. But these were short-term high-cost loans and LS ought to have realised that Mr B wasn't merely borrowing to deal with short-term cash-flow problems; he was borrowing regularly, to address shortfalls in his income and to meet an ongoing need. He was having to consistently take out high interest, short-term lending over a sustained period and the indebtedness caused by this type of borrowing was harmful, in my view. LS should have realised Mr B was at risk of not managing to repay the loans sustainably or getting into financial difficulties.

So I'm upholding this complaint in respect of loans 5 - 14. LS repeatedly lent to Mr B in an unsustainable manner because:

- these loans had the effect of unfairly prolonging his indebtedness by allowing him to take expensive credit intended for short-term use, over an extended time period; and
- the length of time over which Mr B borrowed was likely to have had negative implications on his ability to access mainstream credit and so kept him in the market for these high-cost loans

Putting things right – what LS needs to do

- refund all interest and charges Mr B paid on loans 5 - 14;
- 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†

- the number of loans taken from loan 5 onwards means any information recorded about them is adverse. So all entries about loans 5 - 14 should be completely removed from Mr B's credit file.

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

My final decision

For the reasons given, I partly uphold Mr B's complaint. Gain Credit LLC should put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 July 2020.

Appendix

Loan	Date Taken	Date Repaid	Amount	Repayment
1	1-May-16	2-Sep-16	£250.00	£115.00
2	2-Sep-16	23-Jan-17	£400.00	£162.88
3	3-Dec-16	20-May-17	£380.00	£243.47
4	17-Sep-17	9-Mar-18	£800.00	£345.60
5	30-Dec-17	27-May-18	£200.00	£280.96
6	27-May-18	16-Nov-18	£700.00	
7	10-Jul-18	10-Dec-18	£240.00	
8	4-Sep-18	27-Feb-19	£300.00	
9	15-Sep-18	10-Dec-18	£110.00	
10	1-Oct-18	5-Jan-19	£110.00	
11	29-Oct-18	16-Mar-19	£240.00	
12	25-Nov-18	16-Mar-19	£200.00	
13	3-Jun-19	9-Oct-19	£300.00	

14	6-Jun-19	9-Oct-19	£500.00	

Michael Campbell
Ombudsman