

The complaint

Mrs W says Gain Credit LLC (trading as Lending Stream) is wrong to pursue her for a debt she considers statute barred.

What happened

I sent Mrs W and Lending Stream my provisional findings on this complaint on 18 September 2020. I explained why I intended to uphold Mrs W's complaint and asked Mrs W and Lending Stream to let me know if there was anything else they wanted me to consider. I've set out the main parts of my provisional decision below:

"Mrs W took out a £350 loan with Lending Stream in February 2011. She fell into arrears on this loan and I understand her broader financial situation deteriorated. Mrs W says she entered into debt management plans with the assistance, over time, of different organisations or charities and thought the Lending Stream debt was being repaid as part of these plans. Mrs W was surprised to be contacted by a third party (L) in respect of this debt. Mrs W says this contact first happened in 2018.

An adjudicator considered Mrs W's complaint but didn't think it should be upheld. Mrs W didn't agree with the adjudicator, so her complaint was passed to me to decide.

What I've provisionally 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.

In considering Mrs W's complaint, I will be taking into account what Mrs W says about the debt being statute barred, but I will not make a finding on that point. It is for the courts to decide whether this debt is statute barred or not – I will be deciding the complaint on the basis of what I consider to be fair and reasonable, taking into account the relevant guidance, law and regulations.

Mrs W took out this loan in February 2011. Lending Stream says that it issued the default notice for this loan in May 2011. From the evidence Lending Stream has provided, the last payment towards this debt was made in June 2011.

The regulator's rulebook contains a section relevant to consumer credit firms (called CONC) which outlines some of the rules and guidance applicable to arrears, default and recovery (CONC 7).

CONC 7.15.1G says: "A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the prescriptive period is five years in relation to debt."

CONC 7.15.4R says: "Notwithstanding that a debt may be recoverable, a firm must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the lender or owner has not been in contact with the customer during the limitation period."

CONC 7.15.7G says: "It is misleading for a firm to suggest or state that a customer may be the subject of court action for the sum of the statute barred debt when the firm knows, or reasonably ought to know, that the relevant limitation period has expired."

And CONC 7.15.8R says: "A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred."

The information provided by Lending Stream suggests the chronology of events is as follows. Lending Stream says a default notice was sent to Mrs W on 25 May 2011. According to the schedule of payments it has provided, Mrs W last made a payment towards this debt on 17 June 2011. On this date Mrs W made a payment of £65.43, instead of the £155.53 due. The payment was in effect a payment of only the interest due that month. There are no other payments after this date. Lending Stream has also shown us its email, telephone and other correspondence records. There is no evidence in these records of Lending Stream attempting to chase Mrs W for payment of the debt between the date of the last payment and today. And I've seen no evidence Mrs W contacted Lending Stream, or otherwise acknowledged the debt, during this time.

Lending Stream has said that the debt was sold to L on 12 April 2017, about five years and ten months after Mrs W's last payment. I've not seen whether L attempted to contact Mrs W between April 2017 and June 2017 – and L isn't a party to this complaint, so I can't consider its acts or omissions here. However, I can consider whether Lending Stream acted fairly by transferring the debt to L after almost six years of no contact – and I don't think it did.

I accept that the debt was potentially still within the limitation period set out in the relevant guidance (CONC 7.15.1G) at the point it was passed to L. But I don't think that is enough to mean Lending Stream treated Mrs W fairly. CONC 7.3.2G highlights the overriding principle that Lending Stream, like all consumer credit firms, "should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly." I think that by taking no action for almost six years to pursue, or remind Mrs W, of the outstanding debt, Lending Stream didn't treat Mrs W fairly. Mrs W says all her other debts were dealt with under her debt management plans – and if that is correct, it may be that a timelier reminder of the outstanding debt would've given Mrs W the opportunity to include this debt within those plans. And given there had been no contact for such a long period of time (cf. CONC 7.15.4R), I don't think it was fair or reasonable to pass Mrs W's debt to L so close to the potential end of the limitation period set out in CONC 7.15.1G.

I must also acknowledge that in May 2018 Mrs W contacted Lending Stream with an irresponsible lending complaint. Lending Stream upheld the complaint in respect of the two loans Mrs W had repaid and paid her redress, but it did not uphold the third (and final) loan it had passed to L. At this time, Lending Stream perhaps had the opportunity to recall the debt from L and offset any redress against the debt. That would be this service's standard approach to redress – and had Lending Stream done that, Mrs W wouldn't be in the position of having a debt to pay to L. I think Lending Stream has now lost that opportunity and I don't plan to say this would be a fair outcome now, as it would require Mrs W to return the redress already paid by Lending Stream, which it agreed to pay directly to her.

Given what I've said above, I intend to say Lending Stream needs to put things right for Mrs W. I plan to tell Lending Stream to take the debt back from L and to not pursue Mrs W for the outstanding balance. As Mrs W's loan was defaulted over six years ago, I assume it no longer appears on her credit file. But if it does, Lending Stream should remove it."

Mrs W responded to my provisional decision and confirmed she was happy with my proposed outcome. Lending Stream didn't respond.

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.

As Mrs W accepted my provisional findings and as Lending Stream didn't send me anything else to consider, I see no reason to depart from my provisional decision. So I'm upholding Mrs W's complaint, for the same reasons as given in my provisional decision.

Putting things right

Lending Stream must take Mrs W's debt back from the third party and must not pursue her for the outstanding balance. If the debt still appears on her credit report, Lending Stream must remove it. Lending Stream should also ask the third party to remove anything it may have reported to the credit reference agencies.

My final decision

For the reasons given above, I uphold Mrs W's complaint. Gain Credit LLC must put things right by taking the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 2 November 2020.

Matthew Bradford
Ombudsman