

The complaint

Mr J complains about eleven loans that he took out with Gain Credit LLC, trading as Lending Stream, ("LS"), which he said were unaffordable. He also complains that LS didn't respond to his request for help with his financial difficulties.

What happened

Mr J was given 11 instalment loans by LS from February 2016 to October 2018. Loans 7, 10 and 11 haven't been repaid. Loans 10 and 11 have been sold to a third party ("T").

A summary of the loans taken out by Mr J is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Number of monthly repayments
1.	28/2/16	26/8/16	£420	6
2.	21/5/16	5/8/16	£220	6
3.	4/5/18	31/7/18	£300	6
4.	6/6/18	31/7/18	£430	6
5.	4/8/18	4/10/18	£240	6
6.	29/8/18	1/10/18	£300	6
7.	3/10/18	Unpaid	£160	6
8.	10/10/18	26/10/18	£150	6
9.	13/10/18	26/10/18	£150	6
10.	17/10/18	Unpaid	£160	6
11.	27/10/18	Unpaid	£300	6

Mr J said that LS let him take out loan after loan. Sometimes the loan was used just to pay off a previous loan and to get a few extra pounds. But he struggled further and further with debt. Mr J said that he had other loans and credit with other firms, but LS was still lending him money. Had LS checked his bank statements it could easily have seen that the loans were unaffordable, and he was in a really bad place spending money that he couldn't afford. Mr J said that this had been very stressful and mentally draining and he had recently been in hospital.

Mr J said that he contacted LS in early February 2019 as he was in a lot of financial difficulty and struggling to pay his loans at the time. He wanted the interest on his loans to be frozen

and for a payment plan to be set up. He offered to pay LS £25 a month. Mr J received no substantive response to his request and sent LS another copy of his email on 21 February 2019. LS sent Mr J a brief acknowledgement. Mr J said that LS gave him no help whatsoever and refused to set anything up. Mr J subsequently complained to LS in early January 2020 about the affordability of his loans and its failure to respond to his request for help with his financial difficulties.

LS said that it had sent a letter to Mr J in April 2019 which was a response to his complaint questioning the affordability of certain loans. Mr J hadn't made a complaint about affordability at that time, although he had written to LS seeking help for his financial difficulties. The letter LS sent didn't deal with his financial difficulties. Instead it was a response to an irresponsible lending complaint which Mr J hadn't yet made. The letter also referred to Mr J having nine loans when he'd taken out 11 loans with LS.

LS then sent a final response letter to Mr J in September 2020 which dealt with Mr J's affordability complaint for his 11 loans. LS said that for Loans 1 to 8, the money that Mr J had available after his expenses were subtracted was more than the amount needed to pay it each month and would still have left Mr J with some money to spend on other things. This meant that these loans were affordable. Although Loans 9 to 11 were affordable, LS had thought about the number of loans and the time that passed between each loan being opened. LS said that it could see that it might not have been a good idea for it to make these loans. So, it said it was partially agreeing to Mr J's complaint and that it would refund the interest and fees Mr J had paid it for Loans 9 to 11, it would pay 8% simple interest on this amount and it would remove any adverse marks it had left on Mr J's credit file for Loans 9 to 11.

Our adjudicator's views

The adjudicator issued two views. His first view was based on Mr J having nine loans and the adjudicator recommended that the loans referred to above as Loans 9 to 11 be upheld.

The adjudicator then received information about all eleven loans and issued a second view. He noted that there were two chains of lending. He recommended that Loans 6 to 11 be upheld. He said that LS needed to do more checks than it actually did and that it needed to fully verify the information Mr J had provided to it about his income and expenditure. If it had done so, it would have seen that Mr J was borrowing from a number of different short term lenders and spending considerable amounts on gambling. This trend had continued for the period after Loan 6 and this together with the fact that Mr J had by this time started to regularly overlap his loans ought to have alerted LS to the possibility that he might have been having problems managing his money. In these circumstances, the adjudicator thought that LS ought to have realised it was unlikely Mr J would've been able to sustainably repay Loan 6 and any subsequent loans.

LS responded to the second view by offering to settle Loans 6 to 11. It noted that Mr J had an outstanding balance to pay after the compensation was deducted from the balance due.

Mr J disagreed with the adjudicator's view. He said that LS had allowed him to open another account with another of its businesses ("LS2") after he had already missed payments on Loan 1. Mr J had asked LS for help on numerous occasions and it failed to help him and caused him financial difficulties. He also said that other loan companies had upheld his complaints. Mr J already had multiple loans while LS allowed him to take further loans out. He would like the loan information and bank statements he'd provided to this service looked at. Mr J also said that LS's figures in its offer letter needed checking.

The adjudicator checked LS's figures and said that it seemed that the calculations LS had worked out seemed to be correct.

Mr J then provided more information to this service about amounts borrowed from LS2 and other loans. He believed that had proper checks been made he would not have found himself in this situation. His credit report could not have been checked correctly. He also referred to the aspect of his complaint about LS's failure to respond to his request for help with his financial difficulties.

As this complaint hadn't been resolved informally, it was passed to me, an ombudsman, to investigate.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr J and to LS on 12 January 2021. I summarise my findings:

I said that I was sorry to hear that Mr J's health had been affected as a result of his borrowing.

I'd noted that Mr J had referred to other complaint cases. But I explained that we assessed each case on its own merits and it wasn't appropriate to compare the outcomes of complaints as the circumstances might be very different.

As there were two aspects to Mr J's complaint, I dealt with each of them under separate headings.

Irresponsible lending

I'd noted that when LS lent to Mr J the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

LS needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Mr J 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 thought less thorough checks might be reasonable and proportionate.

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

- 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 had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

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

I thought that it was important for me to say that LS was required to establish whether Mr J 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 didn't automatically follow this was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer 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 followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Mr J's complaint.

I'd noted that LS had offered to settle Loans 6 to 11. So, I didn't propose to investigate these loans but said that I would include the redress for these loans below.

Although the amounts that Mr J needed to repay each month were smaller than if he'd taken a normal payday loan, he was also committing to making those repayments over a longer period. I'd also considered that Mr J sometimes had more than one loan owing to LS and had taken into account the total monthly payments for the outstanding loans.

I'd also noted that Mr J repaid most of his loans earlier than planned. I thought this should have caused some concerns to LS. That might be the sort of behaviour that would indicate that someone was facing problems managing their money and needing to refinance loans on a regular basis. So, I'd also taken that into account when looking at whether LS should have given the loans to Mr J.

I'd thought about whether LS's checks were proportionate for the loans. I'd noted that for Loan 1, Mr J needed to make a highest monthly repayment of around £201 to repay the loan. I hadn't seen a loan agreement for Loan 1, but the account statement referred to a highest monthly payment of around £201. It seemed on the face of it that the repayments would have looked relatively moderate compared to Mr J's declared disposable income. However, I thought the information LS had gathered should have raised concerns and prompted further checks.

LS had told us about the checks it did before lending Loan 1 to Mr J. It had asked for his income which he'd declared as £1,400 and his expenses which were £270.

I'd also seen a summary of LS's credit checks. These showed that Mr J had five active accounts with a value of £200. But they also showed that Mr J had three defaulted accounts with around £3,800 outstanding. And the most recent defaulted account occurred only eight months before the credit check. I thought the results of LS's credit checks ought to have given it concerns that Mr J already had a relatively recent adverse credit record and that his finances might be under pressure. So, I didn't think it was reasonable for LS to rely on the information provided to it by Mr J. And I thought LS should have made some additional checks such as gathering information about Mr J's other short term borrowing commitments. I couldn't see that it had done this.

Mr J had provided his credit report and bank statements from around the time of Loan 1. I thought it was reasonable to rely on these to see what better checks would have likely shown. I could see that proportionate checks on Loan 1 would most likely have shown that Mr J had taken out a short term loan for £100 with another lender a week before his application for Loan 1 and there also appeared to be a second short term loan taken out around three months earlier. But overall, I couldn't safely say that if LS had carried out proportionate checks before Loan 1, it would've seen that Mr J couldn't sustainably make the repayments to Loan 1. So, I didn't intend to uphold Mr J's complaint about Loan 1.

Mr J had applied for Loan 2 whilst Loan 1 was still outstanding, and I could see that he'd asked for a loan of £1,000. But LS had provided a loan of £220 so it appeared that LS had concerns about Mr J's creditworthiness. I'd also noted that LS had increased Mr J's declared expenses by £160. So, it was aware that Mr J wasn't declaring accurate information about his expenses.

I'd also noted that Mr J needed to make a highest total monthly repayment of around £240 for Loans 1 and 2. This was a significant proportion of his disposable income as adjusted by LS.

I'd also seen a summary of LS's credit checks before Loan 2. These appeared to show that Mr J's financial situation had worsened. He still had five active accounts but the value of these had substantially increased to £800. And his credit score had fallen from 769 to 711. In view of Mr J's need for credit whilst still repaying Loan 1, the total amount of his repayments for both Loans 1 and 2, and his worsening credit situation, I thought LS ought to have sought a more comprehensive picture of Mr J's finances when he applied for Loan 2. I couldn't see that it had done this.

I'd again reviewed Mr J's credit report and bank statements from around the time of Loan 2 to see what better checks would have shown. I could see that five days before Mr J's application for Loan 2, he had borrowed a short term loan for £500 and he'd also borrowed around £314 from a short term lender around a week before Loan 2. In the previous month he'd borrowed a high cost credit guarantor loan for £1,500. He already had another short term loan which had been in arrears since March 2016. All these loans would have been repayable around the same time as Loan 2. Mr J also had a current account which was over its overdraft limit at the time. Better checks would also have shown that Mr J was gambling heavily. So, I thought if LS had made further checks, it would have likely seen that Mr J was having difficulties managing his money and wasn't likely to be in a position to sustainably repay further credit. So, I didn't think LS should have agreed to lend Loan 2 to Mr J.

I could see that there was a gap of around two years between Loans 2 and 3. But I'd also noted that Mr J borrowed from LS2, another credit business belonging to Gain Credit LLC, less than a month after he'd repaid Loan 1. Mr J had taken out a running account credit facility with LS2. I thought it was reasonable to conclude that LS would have known about Mr J's borrowing history with LS2. I'd asked LS to provide more information about Mr J's borrowing with LS2. But we hadn't received this from LS. But I could see information about the account from LS2 in Mr J's credit report. I could see that Mr J's opening balance on the account was £205 although the credit limit was £200. I could see that Mr J's balance remained over or very near the credit limit until LS2's account went into default in June 2020. So, Mr J was still using the account when he took out Loans 3 to 11.

So, I didn't think it would have been reasonable for LS to treat Mr J as a new customer before Loan 3 for the purpose of its checks.

Before LS lent Loan 3 to Mr J, it had again asked him for details of his income and his normal expenditure. Mr J's income was £1,489 and his declared expenditure was £725. LS

had increased Mr J's declared expenditure by £71. This service hadn't received the results of LS's credit checks before Loan 3.

The highest monthly repayment on Loan 3 was around £134. It seemed on the face of it that the repayments would have looked relatively moderate compared to Mr J's declared disposable income. But as Mr J had been borrowing almost continuously from LS's two companies for over 26 months, I thought LS should have been looking to build a clearer picture about Mr J's finances before lending to him again.

I'd again reviewed Mr J's credit report and bank statements from around the time of Loan 3 to see what better checks would have shown. I could see that six days before Loan 2, he had borrowed a short term loan for £400 and he also had a short term loan outstanding from two months earlier as well as his borrowing from LS2. In these circumstances, I thought there was a significant risk that Mr J wouldn't have been able to repay Loan 3 without undue difficulty or without borrowing further. So, I didn't think LS had acted reasonably in providing Loan 3.

Loan 4 was taken out around a month after Loan 3 whilst Loan 3 was still outstanding. The loan amount was £430 although Mr J had asked for a loan of £750. So, I thought it was likely that LS had concerns about Mr J's creditworthiness when assessing the loan amount. As Loan 3 was still outstanding, the highest total monthly repayment for both loans was around £270. And again, in view of Mr J's long term borrowing from LS, I didn't think it was reasonable for LS to have relied on the information provided by Mr J. Again, I thought LS should have been looking to build a clearer picture about Mr J's finances before lending to him again.

I'd carefully looked at Mr J's bank statements and credit report for the month before Loan 4 to see what better checks would have shown LS. I could see that Mr J had taken out two other short term loans totalling £900 in the ten days before he'd applied for Loan 4. I thought having seen that information, a responsible lender would have concluded that it was likely Mr J was having problems managing his money and would have been unlikely to be able to meet the repayments on Loan 4 in a sustainable manner. So, I didn't think LS should have agreed to give Mr J this loan.

Mr J applied for Loan 5 just four days after repaying Loans 3 and 4. I thought it was likely that Mr J needed to borrow further from LS in order to fill a hole in his finances that was made by making the repayments of Loans 3 and 4. This wasn't a sustainable form of borrowing. I'd also noted that less than six weeks earlier, LS had given Mr J more time to pay Loan 3 as he'd told it he had financial difficulties. Notwithstanding this, LS had agreed to provide Mr J with a loan of £240 for Loan 5. I'd also noted that LS's credit checks showed that Mr J had nine active credit accounts, the value of which had doubled since Loan 4. I thought Mr J's worsening credit situation together with what LS already knew about Mr J's circumstances should have meant that LS ought to have gained a full and complete picture of Mr J's financial position before agreeing to lend.

I'd reviewed Mr J's credit report and bank statements for the month before Loan 5 to see what better checks would have shown LS. I could see that Mr J had taken out three other short term loans totalling £1,030 in the week before he'd applied for Loan 5 which would all have been repayable at the same time as Loan 5. In these circumstances there was a significant risk that Mr J wouldn't have been able to repay Loan 5 without undue difficulties or without borrowing further. I didn't think that LS could reasonably have believed that Mr J would have been able to make the payments for this loan over the term bearing in mind what a proportionate check would've likely shown. So, I didn't think that Loan 5 should have been provided to Mr J.

Subject to any further representations by Mr J or LS my provisional decision was that I intended to uphold this complaint in part and say that LS shouldn't have given Mr J Loans 2 to 5, and that it needed to pay Mr J some compensation relating to these loans together with what it had already offered to pay to settle Loans 6 to 11. So, I'd said that LS should put things right as shown below.

In deciding what redress LS should fairly pay in this case I'd thought about what might have happened had it stopped lending to Mr J from Loan 2, as I was satisfied it ought to have.

Clearly there were a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr J might have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between Mr J and this particular lender which he might not have had with others. If this wasn't a viable option, he might have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, Mr J might have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if he had done that, the information that would have been available to such a lender and how it would (or ought to have) treated an application which might or might not have been the same is impossible to now accurately reconstruct. From what I'd seen in this case, I certainly didn't think I could fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr J in a compliant way at this time.

Having thought about all of these possibilities, I was not persuaded it would be fair or reasonable to conclude that Mr J would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce LS's liability in this case for what I was satisfied it had done wrong and should put right.

LS's failure to respond to Mr J's request for help with his financial difficulties

The second part of the complaint concerned how Mr J was treated by LS when it was made aware of his financial problems. I'd noted that Mr J sent LS an email on 2 February 2019 to tell it he was under a lot of financial difficulties and unable to pay his loans. He said that he needed a payment plan. He was paying out more than he was earning, and he was having to make paying his rent arrears a priority as he had been threatened with eviction. Mr J had provided information about his other loan payments and offered to pay LS £25 a month. Mr J also asked for the interest on the loans to be frozen.

I'd not seen that Mr J had received a response to this request. But I could see that he'd sent LS another copy of that email on 21 February 2019. I'd seen that LS had responded on that date to say that it had read Mr J's correspondence and was reviewing the matter. But I'd not seen any further responses from LS to Mr J's request for help.

I could see that LS had sent Mr J three default notices on 1 February 2019 for each of his outstanding loans. I'd noted that the default notices said that if the borrower was experiencing repayment difficulties or hardship then the borrower should let the lender know and it would work with the borrower to agree an alternative repayment strategy. I'd also noted that LS had sent Mr J three formal demands on 20 February 2019. The timing of Mr J's two emails in February 2019 suggested they were in response to the default notices and formal demands.

I'd asked the adjudicator to ask LS for its contact notes so that I could see if there was any reference on those to a response to Mr J's emails. I couldn't see that we'd received a response from LS to this request.

I could see that Mr J was distressed by LS's lack of response. He told this Service: -

"I was very down at this time and probably at my lowest point. But decided that I needed to do something about it and get back on track. In February [2019] I was at a stage where I had to pay out over what I was taking in, in wages, and just couldn't do it any more. I was borrowing more and more and gambling more and more.....it just got worse and worse. When they didn't respond to me in 2019 it just made things worse. I didn't know what to pay and what not to pay. I was getting bank charges and interest charges from the bank and various other places for missed and late payments. I just wanted them to help me I couldn't speak to anyone about it. I was just trying to get it sorted out to make life easier as I could no longer go forward like this and hearing nothing just made me more depressed...I didn't understand why they wouldn't help at the time. I got myself in a right state trying to sort it out by gambling which also made things worse.....Then I realised after asking for help, they didn't want to know because they thought I was putting in a claim for the loans, not just asking for help. So, they didn't help because of this. I made it clear in the messages that I needed help and nothing to do with this."

I thought that LS could have done more to respond to Mr J's emails knowing that he was experiencing financial issues. And I thought that as LS had been made aware of the problems Mr J was facing it could have done more at that point to support him. When a lender is told about a consumer's financial difficulties, I'd expect it to be sympathetic and positive. As it didn't seem to have responded to LS about his financial difficulties, I didn't think that LS had treated Mr J fairly here. And I could see that its failure to respond had caused Mr J a considerable amount of trouble and upset. So, I thought it was fair that LS should compensate him for that, and I thought that £250 compensation would be appropriate here.

putting things right – what LS needs to do

1. pay Mr J £250 compensation;
2. a) refund the interest and fees Mr J paid for Loans 2 to 6, 8 and 9;
b) pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement;
- c) remove any adverse information about these loans from Mr J's credit file.

I understand that Loans 7, 10 and 11 haven't been fully repaid. In order to put Mr J back into the position he would have been had Loans 7, 10 and 11 not been agreed for him, LS needs to ensure that Mr J only repays the principal borrowed on these loans. In other words, he should not pay any interest or charges for Loans 7, 10 and 11. So, LS needs to:

- d) remove any interest and charges applied to Loans 7, 10 and 11;
- e) treat all payments that Mr J had made towards Loans 7, 10 and 11 as payments towards the principal borrowed;
- f) remove any adverse information about Loans 7, 10 and 11 from Mr J's credit file, once they have been settled.

If there are capital balances outstanding on Loans 7, 10 and 11 after steps d) and e) have been taken, LS can use the refunds from steps 2a) and b) above to reduce these balances and any remaining refund should be paid to Mr J. If after applying the refunds, there is still an outstanding capital balance then LS needs to treat Mr J fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with him.

As Loans 10 and 11 have been sold to T, then LS needs to buy these debts back before deducting any refunds. If it doesn't do this, or can't do this, then it needs to work with T to bring about steps d) to f) above.

*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Mr J a certificate showing how much tax it has taken off if he asks for one. If LS intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Mr J responded to my provisional decision to say that it was a fair outcome.

LS hasn't provided a response to my provisional decision.

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.

Given that Mr J and LS have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require LS to pay Mr J some compensation and to take the steps set out above.

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Gain Credit LLC, trading as Lending Stream, to pay the compensation and to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 March 2021.

Roslyn Rawson

Ombudsman